

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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JEAN AZOR-EL, et al.

Plaintiffs,
VS. 1:20-cv-03650-KPF

CITY OF NEW YORK, et al.,

Defendants.

-----x

THE ORAL DEPOSITION of DEPUTY COMMISSIONER PATRICIA FEENEY, produced, sworn and examined on behalf of the Plaintiffs, pursuant to Notice to Take Deposition, on Tuesday, November 10, 2020, beginning at 12:10 a.m. eastern time, via videoconference, before me,

TRICIA D. TATE
CERTIFIED COURT REPORTER
HERITAGE REPORTING

a Certified Court Reporter, in a certain cause now pending before the United States District Court, Southern District of New York, wherein the parties are as hereinbefore indicated.

A P P E A R A N C E S:

For the Plaintiffs:

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(Appearing via teleconference)

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1 Examination by Mr. Keenan..... 4			2 DEPUTY COMMISSIONER PATRICIA FEENEY,
2			3 was called as a witness and, having been sworn,
3			4 testified as follows:
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EXHIBIT DESCRIPTION PAGE			BY MR. KEENAN:
5 Exhibit 1 Notice of 30(b)(6) deposition..... 9			6 Q Good afternoon, Deputy Commissioner Feeney. How
6 Exhibit 2 Affidavit, 3/26/2020..... 23			7 are you today?
7 Exhibit 3 Affidavit, 4/2/2020..... 38			8 A I'm very well. How are you?
8 Exhibit 4 Updated Affidavit, 4/24/2020..... 53			9 Q I'm doing well. We had a chance to briefly get
9 Exhibit 5 BOC Weekly Report..... 54			10 acquainted before we got on the record today.
10 Exhibit 6 BOC Housing Area Capacity Data..... 55			11 Again, for the record, my name is E.E. Keenan. I
11 Exhibit 7 Letter, 11/6/20 to Brann, et al..... 56			12 am an attorney representing various Plaintiffs in
12 Exhibit 8 Bates NYC000001..... 60			13 this matter that's going by the caption Jean
13 Exhibit 9 Bates NYC000002 - 7..... 60			14 Azor-El versus City of New York, et al. You
14 Exhibit 10 Bates NYC000008 - 10..... 61			15 understand that you are here today as a corporate
15 Exhibit 11 Bates NYC000011 - 12..... 63			16 representative of the City of New York to give
16 Exhibit 12 Bates NYC000013 - 14..... 63			17 testimony on various topics pursuant to a
17 Exhibit 13 Bates NYC000015 - 16..... 63			18 deposition notice, correct?
18 Exhibit 14 (Not used).....			19 A Yes.
19 Exhibit 15 Bates NYC000018 - 19..... 64			20 Q And Deputy Commissioner Feeney, could you start
20 Exhibit 16 Bates NYC000020 - 24..... 64			21 us off by stating your full legal name.
21 Exhibit 17 Bates NYC000025 - 28..... 66			22 A Patricia Ann Feeney.
22 Exhibit 18 Bates NYC000029 - 34..... 66			23 Q And Deputy Commissioner Feeney, I want to make
23 Exhibit 19 Bates NYC000035 - 36..... 66			24 sure that I'm addressing you by the correct title
24			25
25			

<p>1 or mode of address. Would you prefer 2 Commissioner Feeney, Deputy Commissioner Feeney, 3 Ms. Feeney, how do you prefer to be addressed? 4 A It really doesn't make a difference to me. 5 Q Okay. 6 A Ms. Feeney, Deputy Commissioner Feeney, it 7 doesn't matter. 8 Q Okay. Deputy Commissioner, saying that each 9 time, may be a little long, so I may have say 10 Commissioner Feeney or Ms. Feeney, if that's 11 okay. 12 A All right. 13 Q I want to just ask you some preliminary 14 questions. Is there any condition, medication, 15 substance or illness that would affect your 16 ability to recall information -- 17 A I didn't hear the last part. 18 Q Okay, I'll repeat the question. Is there any 19 condition, medication, substance or illness 20 affecting you that would influence your ability 21 to recall information or testify truthfully 22 today? 23 A No. 24 Q Are you aware of any reason that your deposition 25 should not proceed at this time or why you would</p>	Page 6	<p>1 Correction? 2 A Since February of 1992. 3 Q And to whom do you report? 4 A The commissioner, Commissioner Cynthia Brann. 5 Q Commissioner Cynthia Brann, B-r-a-n-n? 6 A Yes. 7 Q Okay. And where physically are you today while 8 you're giving your testimony? 9 A I am at our headquarters in the Bolivar Corporate 10 Center. 11 Q We are doing this deposition by remote means due 12 to the pandemic. We're here via Zoom. I think, 13 as all of us have learned via Zoom over the last 14 few months, sometimes the Zoom can fade in and 15 out. If there is an interruption in the Zoom 16 feed and you're not able to hear me, will you let 17 me know that? 18 A Sure. 19 Q And if there is any question that I ask that you 20 need me to clarify or ask in a different way, 21 will you ask me to do that? 22 A Yes. 23 Q And so if I ask you a question and you go ahead 24 and answer the question without asking for 25 clarification, is it fair for us to conclude that</p>	Page 8
<p>1 not be able to give a deposition? 2 A No. 3 Q You understand that the testimony you're giving 4 here in this deposition is under the same oath 5 and the same requirements as if you were 6 testifying in open court, correct? 7 A Yes. 8 Q Have you ever given a deposition before? 9 A Yes. 10 Q Okay. Have those depositions been in connection 11 with your functions at the Department of 12 Correction? 13 A Yes. 14 Q Commissioner Feeney, what is your present title 15 and role at the New York City Department of 16 Correction? 17 A I am the deputy commissioner for quality 18 assurance and integrity, and basically the 19 majority of the compliance units report to me, so 20 environmental health, fire and safety, the office 21 of policy compliance, the compliance and safety 22 center, and then the engineering auditor, the 23 emergency preparedness unit and the internal 24 audit review unit. 25 Q How long have you been with the Department of</p>	Page 7	<p>1 you understood the question? 2 A Yes. 3 MR. KEENAN: Julia, could we please 4 pull up the 30(b)(6) deposition notice. 5 Q (By Mr. Keenan) And as we introduced before we 6 got on the record here, Commissioner Feeney, 7 our paralegal and litigation manager, Julia 8 Gokhberg, is going to be helping with the 9 exhibits here so I'll be calling on her at 10 various points today. 11 MR. KEENAN: And Mr. Thayer, also if 12 you need us to pull up any exhibits for you, 13 we're happy to do that. 14 (Deposition Exhibit 1 marked.) 15 Q (By Mr. Keenan) This will be marked as 16 Deposition Exhibit 1, Commissioner Feeney. 17 This is a notice of Rule 30(b)(6) deposition. 18 Have you seen this document before? 19 A Yes, I have. 20 Q And you understand that you're here, while you've 21 individually taken an oath, you are here to give 22 testimony on behalf of the City of New York, 23 correct? 24 A Yes, I am. 25 Q What did you do to prepare for this deposition</p>	Page 9

<p>1 today?</p> <p>2 A I met with the law department attorneys and the 3 DOC attorneys once.</p> <p>4 Q Have you reviewed any documents in preparation 5 for today's deposition?</p> <p>6 A No.</p> <p>7 Q Have you been involved in the production of 8 documents in this case?</p> <p>9 A No.</p> <p>10 Q Generally speaking, you understand that there's a 11 list of topics that we are seeking deposition 12 testimony on in Exhibit 1, correct?</p> <p>13 A Yes.</p> <p>14 Q Do you have an understanding of which topics you 15 are here today to testify on?</p> <p>16 A The ones relating to the department's COVID plan.</p> <p>17 Q To the department's COVID plan?</p> <p>18 A Yes.</p> <p>19 MR. KEENAN: Okay. So, and David, you 20 may be able to help me out on this, I don't know 21 that we ever got a formal response to this, which 22 it doesn't matter, I just want to know are -- is 23 the City producing Deputy Commissioner Feeney on 24 all topics today or on specified topics?</p> <p>25 MR. THAYER: On specified topics.</p>	Page 10	<p>1 plan. And the questions regarding the handling 2 of inmates testing positive, I can talk about the 3 department's part of it but not how CHS medically 4 treats inmates.</p> <p>5 (Reporter interruption.)</p> <p>6 (Brief recess.)</p> <p>7 THE WITNESS: So I'm saying that I can 8 answer about the handling of positive individuals 9 from a custody kind of standpoint but not from a 10 medical treatment standpoint.</p> <p>11 MR. KEENAN: Okay.</p> <p>12 MR. THAYER: I just wanted to jump in, 13 I'm sorry.</p> <p>14 MR. KEENAN: Go ahead. Please.</p> <p>15 MR. THAYER: I also wanted to relay 16 that we're producing Ms. Feeney with respect to 17 one and three, one being the organizational 18 structure of the Rikers Island's facilities, and 19 three being the -- at least with respect to the 20 New York City Department of Correction's 21 policies, procedures and guidelines related to 22 COVID-19.</p> <p>23 MR. KEENAN: Okay. So we'll go through 24 those just to be clear. Julia, if we could go to 25 number one.</p>	Page 12
<p>1 MR. KEENAN: Okay. Do you want to 2 just -- to shortcut this, I don't want to ask 3 Commissioner Feeney to guess. What topics -- 4 I'll just ask you, what topics is the City 5 producing Commissioner Feeney on today?</p> <p>6 MR. THAYER: Sure. Let me scroll over 7 to my own version of this. So I think Ms. Feeney 8 is able to speak about, as she just indicated, 9 the policies and procedures and guidelines 10 applicable to Rikers Island facilities relating 11 to the COVID-19 pandemic. That is number four.</p> <p>12 I understand her to be able to testify 13 to Rikers' policies and procedures regarding the 14 handling of inmates testing positive for 15 COVID-19. That's number eight.</p> <p>16 And those who are -- I think within 17 that, those who are vulnerable to contracting 18 COVID. That would be number nine.</p> <p>19 And I think that is it.</p> <p>20 Q (By Mr. Keenan) Okay. Commissioner Feeney, 21 you heard Mr. Thayer specify that you're here 22 today to present testimony on topics four, 23 eight and nine. Is that your understanding?</p> <p>24 A Yeah. I could answer questions about ten if it's 25 related to the COVID, the department's scope and</p>	Page 11	<p>1 Q (By Mr. Keenan) Ms. Feeney, number one is the 2 organizational structure of the Rikers Island 3 facilities. You are prepared today to testify 4 as to that, correct?</p> <p>5 A Yes.</p> <p>6 Q And then number three, as to the New York City 7 Department of Correction, you are prepared to 8 testify as to Department of Correction, or DOC's, 9 policies, procedures and guidelines related to 10 COVID-19, correct?</p> <p>11 A Yes.</p> <p>12 Q And then topic four, I'm not going to read all of 13 that into the record, but you can see it here, 14 correct? Are you able to see topic four, 15 Ms. Feeney?</p> <p>16 A Yes, I can.</p> <p>17 Q Okay. You're here today and prepared to testify 18 as to the matters set forth in topic four?</p> <p>19 A Except for the medical treatment protocol.</p> <p>20 Q Okay. Everything except subparagraph 4-H, 21 correct?</p> <p>22 A Yes.</p> <p>23 MR. KEENAN: And let's go to the next 24 page, if we could, please, Julia.</p> <p>25 Q (By Mr. Thayer) And topic number eight,</p>	Page 13

<p>1 "Rikers' policies and procedures on the 2 treatment and handling of inmates testing 3 positive for COVID-19." Ms. Feeney, you are 4 prepared to testify as to that topic, correct? 5 A As to the DOC handling of the individuals but not 6 their medical treatment, yes. 7 Q All right. And then topic nine, "Rikers' 8 policies and procedures on the treatment and 9 handling of inmates vulnerable to contracting 10 COVID-19, including but not limited to inmates 11 with pre-existing conditions, respiratory 12 conditions and compromised immunity." 13 Are you prepared today to testify as to 14 that topic with respect to the DOC? 15 A Yes. 16 Q Okay. Is there anything I've missed that you're 17 here to testify as to? 18 A I think that's it. 19 MR. KEENAN: Okay. David, anything I 20 missed there? 21 MR. THAYER: I think that, to the 22 extent that there may be overlap to some of the 23 other topics and the topics we've identified, I 24 think Ms. Feeney will be able to testify towards 25 those, but I think that encapsulates the heart of</p>	<p>Page 14</p> <p>1 members. 2 Q (By Mr. Keenan) And then Cynthia Brann is the 3 commissioner of correction, correct? 4 A Yes. 5 Q And she is in overall charge of the Department of 6 Correction, right? 7 A Yes. 8 Q So we understand the structure of the Department 9 of Correction, Rikers Island encapsulates most of 10 the detention and correctional facilities 11 operated by the City of New York, correct? 12 A Yes. 13 Q There are various other facilities located 14 elsewhere in the city, correct? 15 A Yes. 16 Q There's the Manhattan Detention Center, which is 17 also known as The Tombs, correct? 18 A Yes. 19 Q Okay. It is still in operation at this time, 20 right? 21 A Yes. 22 Q Is there a plan to reduce operation at the 23 Manhattan Detention Center or reduce the number 24 of inmates being held there? 25 A Yes. We're closing the facility.</p>
<p>1 Ms. Feeney's expected testimony. 2 Q (By Mr. Keenan) Okay. And we're going to be 3 talking a lot, obviously, today, Ms. Feeney, 4 about the policies in place at Rikers. My 5 questions are directed to Rikers generally, all 6 of the units at Rikers unless I specify 7 otherwise. So I just wanted to make sure we 8 have that understanding. 9 A Okay. 10 Q Some quick background questions. 11 A I can't hear you. 12 (Reporter interruption.) 13 Q (By Mr. Keenan) Some quick background 14 questions. Can you identify who Hazel Jennings 15 is? 16 A She's our chief of department. 17 Q And can you tell us what Ms. Jennings does? 18 A She is the highest ranking uniformed member of 19 the department. She oversees all of the 20 uniformed facilities and uniformed staff members. 21 MR. KEENAN: Ms. Tate, did you get 22 that? 23 THE COURT REPORTER: No, I didn't get 24 the last word. 25 THE WITNESS: Staff, uniform staff</p>	<p>Page 15</p> <p>1 Q When is that occurring? 2 A Before the end of the year. I don't have an 3 exact date. 4 Q Okay. Does that relate to COVID-19 or is it just 5 part of the long-term general planned closure of 6 the facility? 7 A It's part of the long-term plan to build the new 8 borough-based jails. 9 Q Other than Rikers and the Manhattan Detention 10 Center, are there any -- are there any other 11 correctional facilities that the City operates 12 other than simply a short-term lockup located at 13 a police precinct? 14 A Yes, we have the Vernon C. Bain Center in the 15 Bronx. 16 Q And which inmates does that location house? 17 A They're detainee inmates. 18 Q Is there any difference between who is sent to 19 Center in the Bronx and who's sent to Rikers or 20 NVC? 21 A The facilities generally get admissions from the 22 boroughs that they're -- that they're in, and 23 VCBC is getting new admission -- is getting new 24 admission inmates right now. 25 Q All right. Is the facility in the Bronx slated</p>

<p>1 to be closed?</p> <p>2 A No.</p> <p>3 Q Okay. And so there are no plans to close or 4 reduce inmate population at this time at the -- 5 at the Center in the Bronx?</p> <p>6 A Not at this time, no.</p> <p>7 Q The inmates who are presently housed in the 8 Manhattan Detention Center, are they going to 9 have to be re-aligned to being housed in Rikers?</p> <p>10 A Or in VCBC, yes.</p> <p>11 Q Okay. And there's been no addition of space or 12 construction of new housing units either in the 13 Bronx or at Rikers, correct?</p> <p>14 A No. It will be the number of closed housing 15 areas that we're going to open to bring the new 16 inmates into.</p> <p>17 (Reporter interruption.)</p> <p>18 Q (By Mr. Keenan) Is DOC -- and I'll speak 19 generally about DOC, and I assume this applies 20 to Rikers unless you tell me otherwise, is DOC, 21 including its operations at Rikers, accredited 22 by any accrediting organizations such as the 23 American Correctional Association or the 24 National Commission on Healthcare and 25 Corrections?</p>	Page 18	<p>1 those guidelines?</p> <p>2 A The CDC is one of the preeminent public health 3 agencies in the country.</p> <p>4 Q And same question with respect to the New York 5 State and New York City departments of health, 6 why are you looking to their guidelines and 7 guidance in developing your COVID-19 --</p> <p>8 A Again, they're public health experts.</p> <p>9 Q And would you agree with me that the CDC, the New 10 York State Department of Health and the New York 11 City Department of Health have greater expertise 12 in public health response in dealing with 13 pandemics than the DOC has in-house?</p> <p>14 A Yes. That's why we run most of our plans through 15 the health department and the city.</p> <p>16 Q And when you said you run most of your plans 17 through the health department and the city, can 18 you tell us what you mean by running it through 19 the health department?</p> <p>20 A So like when we're working to reopen services, 21 our plans are reviewed by the health department 22 and we work with them to make sure that we have 23 the best plans that we can to keep our staff and 24 individuals safe.</p> <p>25 Q Commissioner Feeney, would you agree that the DOC</p>	Page 20
<p>1 A No.</p> <p>2 Q All right. Is DOC seeking accreditation by any 3 accrediting agency or organization?</p> <p>4 A Not to my knowledge, no.</p> <p>5 Q Why not?</p> <p>6 A I think that we're waiting to seek accreditation 7 in the new facilities.</p> <p>8 Q If DOC sought accreditation at this time, do you 9 believe you would not obtain accreditation for 10 some reason?</p> <p>11 A I haven't looked at the accreditation standards 12 in quite some time, so I'm not sure.</p> <p>13 Q In dealing with COVID-19 --</p> <p>14 A Uh-huh.</p> <p>15 Q -- what standards have you looked to, and when I 16 say "you," I mean the Department of Correction, 17 what standards or guidance has the DOC looked to 18 in developing its response to COVID-19?</p> <p>19 A The CDC guidelines, the New York State Department 20 of Health guidelines, and the New York City 21 Health Department guidelines.</p> <p>22 Q Okay. Anything else?</p> <p>23 A No, I think that's it.</p> <p>24 Q Tell us why the DOC has looked to the CDC 25 guidelines, what -- what importance you place in</p>	Page 19	<p>1 has a duty to inform itself about public health 2 threats?</p> <p>3 A Yes.</p> <p>4 Q Okay. And would you agree that the DOC has a 5 duty to seek advice from competent healthcare 6 professionals?</p> <p>7 A Yes.</p> <p>8 Q Would you agree that the DOC has a duty to 9 explore what the available alternatives are for 10 dealing with public health threats?</p> <p>11 A Yes.</p> <p>12 Q And would you agree with me that the DOC has a 13 duty to act based on facts and not just based on 14 assumptions?</p> <p>15 A Yes.</p> <p>16 Q Would you agree that the DOC has a duty to 17 consult national, state and local public health 18 guidance in responding to COVID-19?</p> <p>19 A Yes.</p> <p>20 Q Would you agree with me that the DOC has a duty 21 to keep Rikers Island safe and sanitary?</p> <p>22 A Yes.</p> <p>23 Q Would you agree the DOC has a duty to keep both 24 staff and inmates safe?</p> <p>25 A Yes.</p>	Page 21

<p style="text-align: right;">Page 22</p> <p>1 Q Would you agree that the DOC has a duty to update 2 or reconsider its protocols when circumstances 3 have changed?</p> <p>4 A I'm sorry, you broke up. And I didn't hear the 5 whole question.</p> <p>6 Q So would you agree with me the DOC has a duty to 7 update or reconsider its protocols if 8 circumstances have changed?</p> <p>9 A Yes.</p> <p>10 Q Would you agree with me that it's not enough just 11 to have policies on paper, the DOC needs to 12 enforce the policies?</p> <p>13 A Yes.</p> <p>14 Q And would you agree with me that in order to 15 ensure the policies are actually being enforced 16 and implemented, the DOC and its management have 17 a duty to monitor whether staff and inmates are 18 complying with policies?</p> <p>19 A Yes.</p> <p>20 Q And the DOC has a duty to take action if people 21 are not complying with policies?</p> <p>22 A Yes.</p> <p>23 Q When was the first time that DOC received 24 information about COVID-19 being a potential 25 health threat?</p>	<p style="text-align: right;">Page 24</p> <p>1 Why don't we just briefly go through the four 2 pages of that so you can see every page of it.</p> <p>3 A Okay.</p> <p>4 Q Having seen all four pages of Exhibit 2, 5 Commissioner Feeney, do you recognize this as an 6 affidavit that you executed on March 26, 2020?</p> <p>7 A Yes.</p> <p>8 Q Okay. Would you agree with me that COVID-19 9 poses a serious threat of harm or even death to 10 people who contract it?</p> <p>11 A Yes, it can.</p> <p>12 Q And would you agree with me that COVID-19 is a 13 serious health threat and safety threat?</p> <p>14 A Yes.</p> <p>15 Q Let's go to page 2. Okay?</p> <p>16 A Uh-huh.</p> <p>17 Q I want to ask you about hand hygiene. This talks 18 about some guidance. Let's go to the prior page 19 if we could, Julia.</p> <p>20 So your affidavit says: As part of the 21 ongoing efforts to contain the spread of 22 COVID-19, the DOC has implemented various 23 measures communicated then to staff and persons 24 in custody. These recommendations include the 25 following.</p>
<p style="text-align: right;">Page 23</p> <p>1 A I think we had our first meeting about it in 2 February. We were meeting to update our pandemic 3 plan.</p> <p>4 Q Did DOC already have a pandemic plan at that 5 time?</p> <p>6 A Yes, we did.</p> <p>7 Q Has DOC ever responded to any prior epidemic or 8 pandemic?</p> <p>9 A Yes.</p> <p>10 Q What epidemics or pandemics has DOT responded to?</p> <p>11 A H1N1 was the most recent pandemic.</p> <p>12 Q And so you had a pandemic plan at that time?</p> <p>13 A Yes.</p> <p>14 Q Is that correct?</p> <p>15 A Uh-huh.</p> <p>16 Q And then did you go about updating that plan?</p> <p>17 A Yes, we did.</p> <p>18 MR. KEENAN: I want to bring up a 19 series of affidavits. Julia, if we could bring 20 up the March 26, 2020 affidavit of Deputy 21 Commissioner Feeney. This will be Exhibit 2. 22 (Deposition Exhibit 2 marked.)</p> <p>23 Q (By Mr. Keenan) Commissioner Feeney, this is 24 going to be marked as Exhibit 2. It is an 25 affidavit that you executed in March of 2020.</p>	<p style="text-align: right;">Page 25</p> <p>1 And then I'm paraphrasing here, but 2 then we go to the next page, and it says in 3 subparagraph D, "Hand hygiene - wash hands 4 frequently with soap and water. If soap and 5 water are not available, the use of alcohol based 6 hand sanitizer shall be employed. Only staff may 7 carry hand sanitizer per DOC policy."</p> <p>8 Did I read that correctly?</p> <p>9 A Yes.</p> <p>10 Q Okay. Would you agree with me that hand hygiene 11 is critical in stopping the spread of COVID-19?</p> <p>12 A Yes.</p> <p>13 Q And why do you suggest or has DOC suggested the 14 use of hand sanitizer?</p> <p>15 A We only suggest the use of hand sanitizer when 16 washing with soap and water in a sink is not 17 available per CDC guidelines. It's much better 18 to wash your hands with soap and water. And 19 after you physically remove the virus from your 20 hands, then to use hand sanitizer.</p> <p>21 Q You acknowledge in your affidavit that a sink to 22 wash your hands with soap and water is not always 23 necessarily going to be available to staff and 24 inmates at Rikers, correct?</p> <p>25 A For the staff, definitely not. To the</p>

<p>1 incarcerated individuals, it is most of the time.</p> <p>2 Q How do you know that?</p> <p>3 A Because I worked here and toured the jails for</p> <p>4 many years and I know that there are sinks with</p> <p>5 soap and water in every cell and every housing</p> <p>6 area.</p> <p>7 I know that the intakes have sinks with</p> <p>8 soap and water in them, as do the clinics. There</p> <p>9 are inmate bathrooms in areas like social</p> <p>10 services, although during COVID, the individual</p> <p>11 separate staying in their housing area.</p> <p>12 Additionally, we do audits every day.</p> <p>13 The captains audit each one of their areas three</p> <p>14 times during an eight-hour tour.</p> <p>15 And in addition to that, my staff and</p> <p>16 the bureau chief of facility operations staff</p> <p>17 conducts additional tours of additional audits so</p> <p>18 we're basically auditing the audits to ensure</p> <p>19 that there's soap at every sink, that the sinks</p> <p>20 are operable, that we have adequate sanitizing</p> <p>21 solution, and that PPE is available.</p> <p>22 Q Why does DOC not make hand sanitizer available to</p> <p>23 inmates?</p> <p>24 A Because it has 60 percent alcohol in it and it's</p> <p>25 highly flammable so it's dangerous.</p>	Page 26	Page 28
<p>1 And also, in other jurisdictions there</p> <p>2 have been reports of individuals drinking the</p> <p>3 hand sanitizer for the alcohol content.</p> <p>4 And since soap and water is available</p> <p>5 at the sinks, it's a risk that we don't want to</p> <p>6 take.</p> <p>7 Q You mentioned sinks. Isn't it the case that one</p> <p>8 means of responding to COVID-19 is that people</p> <p>9 are supposed to engage in social distancing and</p> <p>10 not congregate in spaces?</p> <p>11 A Yes.</p> <p>12 Q Okay. Sinks in congregate spaces, if people are</p> <p>13 all trying to wash their hands at the same time,</p> <p>14 run the risk of people congregating and not being</p> <p>15 able to socially distance, correct?</p> <p>16 A Well, I've been touring the jail daily and weekly</p> <p>17 since COVID started and have never seen a long</p> <p>18 line at any of the sinks for individuals to wash</p> <p>19 their hands. But I guess, theoretically, that</p> <p>20 would be correct.</p> <p>21 Q And it might well be that the reason you haven't</p> <p>22 seen a long line is that people don't want to</p> <p>23 congregate, right?</p> <p>24 A I have not had anybody tell me that they haven't</p> <p>25 been able to wash their hands because there are</p>	Page 27	Page 29
		<p>1 too many people in the bathroom. And one of the</p> <p>2 questions that we ask on the audit is: Are there</p> <p>3 any complaints that the incarcerated individuals</p> <p>4 have about what's going on in the area.</p> <p>5 Q You said that you have received or heard of</p> <p>6 reports of people drinking hand sanitizer in</p> <p>7 other jurisdictions. Which reports are --</p> <p>8 (Reporter interruption.)</p> <p>9 Q (By Mr. Keenan) Which reports have you heard</p> <p>10 and in what jurisdictions?</p> <p>11 A I don't know the specifics of which ones off the</p> <p>12 top of my head.</p> <p>13 Q Do you know if those -- so you don't -- you don't</p> <p>14 have the details of what happened or what facts</p> <p>15 were those supposed scenarios, correct?</p> <p>16 A No, not with me.</p> <p>17 Q Has anyone in DOC's custody ever drunk hand</p> <p>18 sanitizer?</p> <p>19 A I don't know.</p> <p>20 Q You're not aware of any situation ever in which</p> <p>21 anybody in DOC custody has drunk hand sanitizer,</p> <p>22 correct?</p> <p>23 MR. THAYER: Objection. You can</p> <p>24 answer, Ms. Feeney.</p> <p>25 A I don't know. Like medical staff doesn't always</p> <p>1 give us information about inmates' medical</p> <p>2 conditions.</p> <p>3 Q (By Mr. Keenan) But you -- you, as you sit</p> <p>4 here today, are not aware of any instance of</p> <p>5 that ever happening, are you?</p> <p>6 A No.</p> <p>7 Q Okay. Are you aware of any instance ever in</p> <p>8 which an inmate in DOC custody has lit hand</p> <p>9 sanitizer on fire?</p> <p>10 A We don't give them access to it, so no.</p> <p>11 Q What means -- do inmates have access to lighters</p> <p>12 or matches such that they could light hand</p> <p>13 sanitizer on fire if they wanted to?</p> <p>14 A They should not, but they are -- they have set</p> <p>15 fires with batteries and wires.</p> <p>16 Q How many fires have been set in Rikers in the</p> <p>17 past month?</p> <p>18 A A couple. I don't know the actual number.</p> <p>19 Q Okay. How many inmates are there at Rikers right</p> <p>20 now?</p> <p>21 A Approximately 7,000.</p> <p>22 Q Let's go to paragraph 8e. This talks about</p> <p>23 social distancing strategies that have been</p> <p>24 employed. In dormitory style settings --</p> <p>25 A Uh-huh.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q -- what -- are people actually sleeping at least 2 six feet apart from each other? 3 A In some instances. In some instances we 4 recommend that they sleep head to toe. We've 5 been predominantly keeping the inmates in kind of 6 the same group of inmates. We haven't been 7 transferring them out a lot, and we have not had 8 a case of transmission in the jail since 9 May 19th. The only positive cases have been new 10 admission inmates. 11 Q You do not test current inmates, correct? 12 A You would have to ask medical for the reason that 13 they test. But if someone is symptomatic, they 14 would get tested. 15 Q But there's no -- there is no program in place 16 for the regular testing or even random testing of 17 inmates who are in Rikers, correct? 18 A You would have to ask the medical staff that 19 question. 20 Q But -- but you're not aware -- you're not aware 21 of that, are you? 22 A No, but the medical staff wouldn't necessarily 23 tell me that. 24 Q Who's in charge of medical staff at Rikers? 25 A Drs. Patsy Yang and Dr. Ross McDonald.</p>	<p>1 well? 2 A The majority of our individuals in custody right 3 now I believe are violent -- 4 (Reporter interruption.) 5 A For violent crimes; the majority of them are 6 felony arrests at this point. 7 Q (By Mr. Keenan) That's a majority, but it's 8 not everybody, correct? 9 A Correct. 10 Q All right. Why is it that at least six feet of 11 distance is not being maintained in every 12 dormitory setting? 13 A In some instances, the beds are bolted to the 14 floor so that's why we suggest they sleep head to 15 toe. We've been bringing more housing areas on 16 line so that we can clean out housing areas that 17 are a little higher in occupancy. 18 Q Which housing areas have you been brought back on 19 line? 20 A We're working on the one in EMTC to bring back on 21 line; they're working in RNDC. 22 Q How many additional beds or space for how many 23 additional inmates are you going to be able to 24 bring back on line by reopening some of these 25 closed facilities?</p>
<p style="text-align: right;">Page 31</p> <p>1 (Reporter interruption.) 2 Q (By Mr. Keenan) Can we hear those names again? 3 A Patsy Yang and Ross McDonald. 4 Q McDonald or McDonnelly? 5 A McDonald. 6 Q McDonald, okay. So back to my question of social 7 distancing. Are people actually sleeping at 8 least six feet apart from each other in 9 dormitories or not? 10 A Not every dormitory, no. 11 Q Okay. Does the DOC have in place a set of 12 processes or standards for deciding whether DOC 13 is going to release certain inmates in order to 14 relieve the number of people in Rikers? 15 A There's a work release program that the 16 commissioner can identify people to participate 17 in. And the medical staff identified and 18 recommended that a certain number of individuals 19 be released due to their medical condition and 20 that is going through the appropriate legal 21 process, and approximately 1500 individuals were 22 released. 23 Q Are all of the people in Rikers who are being 24 detained people with violent criminal records, or 25 are there some people with non-violent records as</p>	<p>1 A I don't know offhand. 2 Q You said you don't know offhand? 3 A Uh-huh. 4 Q Where will we find that out? 5 A Custody management. 6 Q What is the timeline for bringing these 7 facilities back on line? 8 A I don't know. 9 Q Okay. Is the reason that there's not at least 10 six feet of distance between everybody in 11 dormitory setting basically a space issue; 12 there's just presently not enough space? 13 A I'm not sure that that's correct. I know that, 14 like I said, they've been transferring housing 15 areas in cohorts and we have been trying not to 16 move people, but I don't necessarily know that 17 it's we don't have space to put other people. 18 Q And -- 19 A If we needed to, we can open EMTC also, so we 20 have beds. 21 Q What is EMTC? 22 A One of the jails. 23 Q And -- and it's presently closed? 24 A Yes. 25 Q How come it hasn't been reopened yet?</p>

<p>1 A Well, we opened it during COVID, that's where we 2 housed symptomatic and positive individuals. And 3 when that number went down so that those 4 individuals could be housed in west facility, the 5 facility, we would be able to open it anytime we 6 needed it.</p> <p>7 Q And if it's closed right now and you have people 8 who are presently sleeping less than six feet 9 apart from each other, how come you don't reopen 10 it right now in order to thin out the population 11 so people can distance?</p> <p>12 A So I think we have to look at the COVID plan as a 13 whole, and, as I said, we haven't had a case of 14 transmission since May 19th within the 15 facilities, so I don't necessarily think that the 16 number of individuals in the housing area right 17 now --</p> <p>18 (Reporter interruption.)</p> <p>19 A -- is harmful.</p> <p>20 Q (By Mr. Keenan) So DOC has basically made a 21 judgment at this point that it's not necessary 22 to have at least six feet of distancing because 23 you haven't had a reported case of in-facility 24 transmission since May?</p> <p>25 A That's not what I said, but I'm saying you have</p>	<p>1 and protocols are in place for how they are 2 housed and interacting with people during those 3 14 days?</p> <p>4 A So they're housed by classification so some are 5 in dorms and some are in cells.</p> <p>6 Q And is that classification according to 7 dangerousness or their record, or how are they 8 classified for dormitory versus cell housing?</p> <p>9 A It's a -- it's a whole system. It deals with 10 what their charges are, what previous charges 11 within the last seven years were, what their age 12 is, do they have an infraction history. So 13 there's a whole bunch of things that go into 14 their classification.</p> <p>15 Q Other than the admission of -- or the testing of 16 new inmates --</p> <p>17 A Uh-huh.</p> <p>18 Q -- does DOC do any other testing for COVID?</p> <p>19 A DOC does not test for COVID. CHS tests for 20 COVID.</p> <p>21 Q Does CHS do any other testing for COVID?</p> <p>22 A As I said, you would have to ask them. Other 23 than for symptomatic inmates, I don't know what 24 their protocol is.</p> <p>25 Q DOC has not implemented a regimen for testing</p>
<p>1 to look at the whole -- the whole COVID plan as a 2 whole --</p> <p>3 Q What --</p> <p>4 A -- is successful.</p> <p>5 Q How do you define success, Commissioner Feeney?</p> <p>6 A That we haven't had transmission in the facility 7 since May.</p> <p>8 Q Have you had any kind of transmission?</p> <p>9 A New admission inmates coming in when they get 10 tested when they come in to the system have been 11 positive, but not among our inmates who have been 12 here.</p> <p>13 Q Do you test every inmate upon admission?</p> <p>14 A Yes.</p> <p>15 Q And until you get the test results back, what are 16 the protocols in place for housing those people 17 while you're waiting on it?</p> <p>18 A So they're housed in new admission housing where 19 they remain for at least 14 days and their COVID 20 test returns, and the individuals don't get moved 21 to other housing until the CHS staff clear them 22 to be moved.</p> <p>23 Q While inmates are in the new admissions housing 24 for the 14 days, are they in isolation or are 25 they housed with other inmates? What procedures</p>	<p>1 staff, has it?</p> <p>2 A No. We set up an agreement with Northwell and 3 they do our testing for us. We did send staff on 4 to go get tested, but there is no mandatory 5 testing. But we do screening of everybody that 6 enters the facility.</p> <p>7 Q And how do you do that?</p> <p>8 A There's a series of questions. They fill out a 9 form, there's a series of questions that deal 10 with COVID-related symptoms and have you been 11 around somebody who had COVID.</p> <p>12 And then your temperature is checked.</p> <p>13 If you have a temperature of 100.4 or greater, 14 you're not allowed into the facility and you have 15 to report to your medical doctor. And then you 16 have to get cleared by the health management 17 division to return to work.</p> <p>18 Q Are all staff, do they have their temperatures 19 taken every day when they report?</p> <p>20 A Yes. Those that report to the jails, yes.</p> <p>21 Q Let's go to the April 2nd, 2020 affidavit.</p> <p>22 A I'm sorry, I can't hear you.</p> <p>23 MR. KEENAN: Sure. Let's go to the --</p> <p>24 Julia, let's go to the April 2nd affidavit. This 25 will be Exhibit 3. And let's just go through all</p>

<p>1 the pages there. 2 (Deposition Exhibit 3 marked.) 3 Q (By Mr. Keenan) Commissioner Sweeny, do you -- 4 I'm sorry, Feeney. Apologies. 5 A No problem. 6 Q Commissioner Feeney, do you recognize Exhibit 3? 7 A Yes. It's another one of the affidavits I wrote. 8 Q Exhibit 3 is an affidavit that you executed on 9 April 2nd, 2020? 10 A Yes. 11 Q Let's go to paragraph 8, please. Paragraph 8 12 says: ...DOC's policy is to provide every 13 individual in custody with their own bar of soap 14 and access to cleaning supplies in the housing 15 area janitor's closet including, but not limited 16 to: Disinfectant, mold and mildew cleaner, 17 general cleaner, and floor cleaner, and cleaner 18 without grit. 19 Did I read that correctly? 20 A Yes. 21 Q And -- just getting to the right place here. 22 What type of soap is distributed to inmates? 23 A Bar soap. 24 Q Bar soap, okay. Is it an antibacterial soap or 25 some other kind of soap, or do you know what kind</p>	Page 38	<p>1 A Okay, I don't know the actual number. 2 Q Okay. Well, what I'm trying to understand is is 3 there just one janitor's closet available to all 4 the inmates in a given housing unit? 5 A So there's one janitor's closet for each side of 6 the housing area, or if there's one janitor 7 closet, it has twice the number of supplies. 8 Q So how many janitors' -- like, for instance, if I 9 want to get a canister or a spray bottle of 10 disinfectant, how many spray bottles or canisters 11 of disinfectant are available for every hundred 12 inmates? 13 A The disinfectant is provided in a dispenser and 14 the dilution, it's got a very strong dilution 15 ratio so it's a bottle of the concentrated 16 sanitizer that the dispenser dilutes. And the 17 individuals get it in a bucket. We don't use 18 spray bottles for disinfectant. 19 Q So in order -- if you want to get a disinfectant 20 in order to wipe down your cell or your bed or a 21 high-touch surface such as a doorknob, you 22 have -- what are the steps you have to go through 23 to do that as an inmate? 24 A You say to the officer, I would like to clean and 25 sanitize whatever, and the officer will unlock</p>	Page 40
<p>1 of soap it is? 2 A I'm not sure what kind of soap it is. It's made 3 by Corcraft. 4 Q Okay. Made by corporate you said? 5 A Corcraft. 6 Q Spell that for us, please. 7 A C-o-r-c-r-a-f-t. 8 Q Do inmates -- are cleaning supplies available 9 only at one central place in each housing unit or 10 are they dispersed throughout the housing units? 11 A They are locked in the janitor's closet and 12 there's a bucket of sanitizer that, since COVID, 13 we have been leaving out for folks to sanitize 14 the phone before use if they want to. 15 But anytime an individual has out of 16 soap, they can ask for any of the cleaning 17 supplies to clean their own bed or a cell area. 18 And then we have the house detail that's trained 19 in cleaning and sanitizing procedures that does 20 the general cleaning and sanitizing of the 21 housing units. 22 Q So let's take NIC as an example. How many people 23 are in NIC? 24 A Oh, I don't know off the top of my head. 25 Q Several hundred?</p>	Page 39	<p>1 the janitor closet and provide you with the 2 supplies. When you're done with the cleaning, 3 you return the supplies, clean them, and they are 4 again secured in the janitor closet. 5 Q And basically only one inmate can do this at a 6 time, right? 7 A No. Multiple inmates can do it at a time. 8 Q How many? 9 A There are four mop -- mop buckets and mops, and 10 there are six sponges and six green scouring 11 pads, so multiple people can do it at a time. 12 Q But those -- those sponges and green scouring 13 pads are reused? 14 A Yes. When you're done, you place them in a 15 bucket with the sanitizing solution so they get 16 sanitized prior to the next use. 17 Q Okay. 18 A So after ten minutes, they're good to go. 19 Q Okay. So any given sponge or scouring pad has to 20 be sitting there for ten minutes before it can be 21 reused, correct? 22 A Yes. 23 Q Has the department considered acquiring sanitary 24 wipes, such as Clorox wipes, or something, or 25 Lysol wipes to distribute to inmates?</p>	Page 41

<p>1 A We have some wipes, but we don't generally give 2 them to the incarcerated individuals because they 3 end up getting stuck down toilets and it will 4 clog the toilet. So if we use the liquid cleaner 5 and sanitizer, we don't have to worry about 6 clogging the toilets.</p> <p>7 Q How many instances of clogged toilets in the last 8 month have you had because of a wipe?</p> <p>9 A Well, we haven't given them out to the 10 individuals in the last month, but we did do a 11 project in the courts probably a year, year 12 and-a-half ago, where we had the hand sanitizer 13 wipes, not the cleaning sanitizer, and they were 14 constantly being flushed in the toilet.</p> <p>15 Q You said you did a project in the -- in the 16 courts?</p> <p>17 A Yes. In the Bronx courts.</p> <p>18 Q Tell us about that project.</p> <p>19 A Well, it was just that. We were trying to see if 20 it was easier to hand out sanitizing wipes 21 instead of having bar soap in the court pen, and 22 all it ended up really doing was creating a lot 23 of clogged toilets.</p> <p>24 Q Have you ever experimented or tried distributing 25 sanitizing wipes since COVID started?</p>	<p>Page 42</p> <p>1 Q Okay. Give me an example of that.</p> <p>2 A So dispensers in kitchens and in bathrooms, the 3 dispensers we have in the janitor closets will 4 get vandalized if the door is left unlocked.</p> <p>5 Q Have you explored having secured dispensers or 6 dispensers that are not easy to fashion into 7 weapons?</p> <p>8 A These are secured -- 9 (Reporter interruption.)</p> <p>10 A These are secure dispensers.</p> <p>11 Q (By Mr. Keenan) What about have you ever just 12 personally gotten a bottle of -- or a canister 13 of Clorox wipes or Lysol wipes, you know they 14 come in kind of a plastic, softish plastic 15 canister, have you ever seen one of those?</p> <p>16 A Yes.</p> <p>17 Q Okay. Have you ever seen one of those be 18 fashioned into a weapon?</p> <p>19 A We don't give them to them so no, I haven't seen 20 them fashioned into a weapon.</p> <p>21 Q Okay.</p> <p>22 A Again, there's no reason to give them sanitizing 23 wipes. We have plenty of Virex 256 sanitizer 24 that's effective against COVID.</p> <p>25 Q Does have Virex 256 sanitizer have any substances</p>
<p>1 A Not to the incarcerated individuals, no.</p> <p>2 Q Okay. Have you explored simply instructing 3 people that they should throw any used sanitary 4 wipes into a trash can and making more trash cans 5 available?</p> <p>6 A Well, there is no reason for us to provide 7 sanitizing wipes because we have adequate 8 sanitizer in the janitor closet. So we have 9 plenty of sanitizer available for the population.</p> <p>10 Q In order to go get the sanitizer, an inmate has 11 to interact face-to-face with a correctional 12 officer, right?</p> <p>13 A That would be the same process with the wipes, 14 any wipes.</p> <p>15 Q Unless you distributed them to inmates generally 16 or put them in dispensers, right?</p> <p>17 A Yeah, we probably we could do that, but 18 dispensers could be broken up into weapons, so we 19 tend to not put dispensers out where the 20 population lives. A dispenser would be locked in 21 the janitor closet also.</p> <p>22 Q Have you ever had a dispenser at Rikers, had an 23 instance of a dispenser for items being made into 24 a weapon?</p> <p>25 A Sure, many times.</p>	<p>Page 43</p> <p>1 in it that could be intoxicating?</p> <p>2 A Not to my knowledge. It's ammonia, it's not an 3 alcohol-based product.</p> <p>4 Q Have you explored having a system in place where 5 correctional officers can distribute hand 6 sanitizer directly to inmates upon their request, 7 Hey, I just want a squirt of hand sanitizer?</p> <p>8 A No. There's no reason for them to have the hand 9 sanitizer. We have sinks with soap and water.</p> <p>10 Q Every --</p> <p>11 A The CDC recommends that you use a sink with soap 12 and water. The hand sanitizer is only 13 recommended to be used when a sink is not 14 available.</p> <p>15 Q Are there inmates who are on work details at 16 Rikers?</p> <p>17 A Yes.</p> <p>18 Q Okay. And when they're on work detail, they are 19 circulating throughout a housing unit in much the 20 same way as a staff member would, right?</p> <p>21 A No. Well, the house detail would live in the 22 housing area. There are only very few instances 23 where we have an outside inmate detail work 24 inside a housing unit.</p> <p>25 Q During a given work detail, it's certainly</p>

<p style="text-align: right;">Page 46</p> <p>1 possible that an inmate wouldn't necessarily have 2 immediate access to a sink to wash their hands, 3 right, because they're working?</p> <p>4 A Well, no. There are bathrooms available for them 5 to use while they're working so they could wash 6 their hands in that bathroom.</p> <p>7 Q Would that be the case with staff as well?</p> <p>8 A Yes.</p> <p>9 Q So why -- why do you issue hand sanitizer to 10 staff then but not to inmates who are on a work 11 detail?</p> <p>12 A Because staff have cart or posts, they have 13 recreation posts. They have posts where they do 14 not have access to a sink with soap and water.</p> <p>15 Q Are you --</p> <p>16 A We have the security posts that are outside, so 17 there are lots of posts where an officer does not 18 have access to a sink and that's where we 19 distribute the hand sanitizer.</p> <p>20 Q Does every inmate in Rikers have access to a sink 21 with soap and water in a non-congregate setting, 22 like not a collective bathroom, a sink that they 23 can go use individually while observing social 24 distancing, does every single inmate have 25 continuous access to a sink like that?</p>	<p style="text-align: right;">Page 48</p> <p>1 A Each individual has their own bar soap, plus we 2 put additional bar soap on each sink.</p> <p>3 Q Okay. In order to use the sink, do you have to 4 handle the sink, like turn a knob or something 5 like that?</p> <p>6 A Yes.</p> <p>7 Q Okay. And I know we're getting into the details 8 of washing one's hands, but it seems important 9 here. If you go and wash your hands and you're 10 using bar soap, unless you have an individual bar 11 of soap with you, you're using bar soap that 12 someone else has used, right?</p> <p>13 A As I said, every individual has their own bar of 14 soap, but we do put additional soap in the 15 bathroom in case they forgot theirs.</p> <p>16 Q So if you don't have your individual soap with 17 you, you have to use soap that someone else has 18 used, right?</p> <p>19 A Or you can ask the correctional officer for 20 another bar of soap. We have boxes of soap in 21 every housing unit.</p> <p>22 Q And in order to turn on the sink, you have to 23 handle the knobs of the sink, correct?</p> <p>24 A Yes.</p> <p>25 Q They're not automated sinks?</p>
<p style="text-align: right;">Page 47</p> <p>1 A Except for when they're walking in corridors or 2 it's hours for rec, yes.</p> <p>3 Q What about inmates who are housed in dormitory 4 settings who don't have a sink in their cell, 5 where do they -- where do they access a sink?</p> <p>6 A They go to the bathroom where we have multiple 7 sinks.</p> <p>8 Q And isn't it the case that a bathroom is a 9 confined space and you might -- the bathroom 10 might be full at any given point in time?</p> <p>11 A Since COVID started, only four individuals are 12 allowed in a congregate bathroom at a time.</p> <p>13 Q How many sinks and how many bathroom stalls or 14 urinals are in a given congregate bathroom?</p> <p>15 A It depends on how many individuals are housed in 16 the area. So small housing areas, like with 14 17 inmates or 20 inmates might have four, six; and 18 areas that have more, seven or eight sinks. It 19 depends on the size of the housing area. It's 20 different in every facility and sometimes in 21 every housing unit.</p> <p>22 Q How is soap -- in those congregate bathrooms, 23 what type of soap is being used?</p> <p>24 A Bar soap.</p> <p>25 Q Bar soap?</p>	<p style="text-align: right;">Page 49</p> <p>1 A No.</p> <p>2 Q Okay. And then when you're done washing your 3 hands -- is there hot water available in all the 4 sinks?</p> <p>5 A Some of them have mixed water, where the hot and 6 cold is mixed so it's warm water. And, really, 7 all the temperature of the water does is increase 8 the amount of suds you get out of the soap. But 9 there are no sinks that have just cold water.</p> <p>10 Q Are inmates able to control the temperature of 11 the water that they are using, or is it pre --</p> <p>12 A It depends --</p> <p>13 Q -- pre-set?</p> <p>14 A It depends on the housing area. Some have hot 15 and cold knobs, and some have mixed water.</p> <p>16 Q And then when you're done washing your hands, you 17 have to handle the knobs again to turn the water 18 off, correct?</p> <p>19 A Right. They can use a towel or a hand towel, 20 depending on where they are, to dry their hands.</p> <p>21 Q Are hand towels always available in all of the 22 bathrooms?</p> <p>23 A Not in housing areas, but in non-housing areas, 24 yes.</p> <p>25 Q Okay. So --</p>

<p>1 A In housing, individuals have their own towels. 2 We also have the ability for them to sanitize the 3 sinks before they use them if they would like to 4 do so. 5 Q And how do you make -- how do you make that 6 possible? 7 A The same way they would do any other cleaning. 8 They ask to get the sanitizer from the janitor's 9 closet. And if they so desire, they can sanitize 10 the sinks before they use it. If not, the sinks 11 are sanitized -- countertop surfaces should be 12 sanitized every two hours. 13 Q Do you know if they actually are? 14 A So as I said, it's audited by both the captains 15 in the jails and my staff and the bureau chief of 16 facility operations, and one of the questions is 17 when was the last time the sanitary tour was 18 conducted; if it's been longer than two hours, 19 the captain is expected to instruct the officer 20 to have the house detail go do it at that time. 21 Q If an inmate -- let's talk about turning off the 22 knobs in the bathroom once you're done washing 23 your hands. 24 A Uh-huh. 25 Q If I don't want to run the risk of touching the</p>	<p>Page 50 1 get sanitizer or needs to -- or needs to get 2 Virex solution or needs to get toilet paper? 3 A They're not necessarily standing right outside 4 the bathroom, but they're in the housing area. 5 Q How many staff have tested positive for COVID-19 6 in the last month? 7 A Oh, in the last month? Maybe 10 or 15. 8 Q And of those 10 or 15 people, did some of them 9 test positive after they had already been working 10 one or more shifts? 11 A I'm sure they did work at some point before they 12 tested positive. 13 Q So it's still the case that, at least in the past 14 month, inmates have been exposed to 15 positive-testing staff, correct? 16 A It could be, but we do tracing. And every time 17 we have a positive staff member, the facility 18 identifies all staff and incarcerated individuals 19 that the individual came in contact with. The 20 staff members get a letter that says you were 21 exposed and recommend that they see their 22 personal physician or at least reach out to them. 23 And the list of incarcerated 24 individuals is given to Correctional Health 25 Services and they do their contact tracing with</p>
<p>Page 51 1 knobs that other people have touched and making 2 my hands dirty again that I just washed, how do I 3 turn off the sink? 4 A You could use some toilet paper. 5 Q Any other method? 6 A No. I think that's about it. 7 Q Okay. In order to go get toilet paper, you would 8 have to go back into a toilet stall which is a 9 confined area that, one, is a small confined 10 area; two, that people defecate in, correct? 11 A Or you bring your own with you. Most inmates 12 have their own roll of toilet paper, so they just 13 bring it with them. 14 Q But not all inmates necessarily, right? 15 A Well, we don't leave toilet paper sitting in the 16 toilet stall so they either -- they have their 17 own roll of toilet paper at their beds or in 18 their cells. 19 Q Okay. 20 A So they can bring it with them if they so 21 desired. And if they didn't have it, they could 22 ask the correction officer for it on the way to 23 the bathroom and they would give it to them. 24 Q Is there always a correction officer standing 25 there outside the bathroom if an inmate needs to</p>	<p>Page 53 1 those individuals. 2 MR. KEENAN: Go to the October 24th 3 through 30th weekly report, if we could pull that 4 up. Actually, before we do that, let's go to the 5 affidavit on April 24th, 2020. This will be -- I 6 think this will be Exhibit 4, correct, Julia? 7 MS. GOKHBERG: Yes, Exhibit 4. 8 (Deposition Exhibit 4 marked.) 9 MR. KEENAN: Let's page through this. 10 MR. THAYER: Mr. Keenan, before -- 11 before you start asking questions on this, would 12 you mind if we took a brief five-minute break? 13 MR. KEENAN: Sure. I just want to 14 identify this for the record and then I was 15 planning to take a break. 16 Q (By Mr. Keenan) So Commissioner Feeney, is 17 Exhibit 4 an affidavit that you executed on 18 April 24th, 2020? 19 A Yes. 20 MR. KEENAN: Thank you. Let's go ahead 21 and take a -- take a break. To be realistic, 22 we'll be back on the record in ten minutes. 23 (Brief recess.) 24 Q (By Mr. Keenan) We are back on the record, 25 Commissioner Feeney, and you understand, of</p>

<p>1 course, you remain under oath until the 2 deposition is completed, right? 3 A Yes. 4 (Deposition Exhibit 5 marked.) 5 Q (By Mr. Keenan) Commissioner Feeney, we're 6 going to look at a weekly report for the Board 7 of Correction. This will be Exhibit 5. This 8 is the report of October 24th through the 30th. 9 MR. KEENAN: If you don't mind bringing 10 that up, please, Julia. 11 Q (By Mr. Keenan) Do you recognize Exhibit 5, 12 Commissioner Feeney? 13 A The weekly COVID report. 14 Q And let's go to a few pages in, I think it will 15 be five pages in. Okay, "Total Population in DOC 16 Custody." Do you see this graph here, do you 17 recognize it as a graph of the total DOC custody 18 population? 19 A Yes. 20 Q Okay. And is that accurate? 21 A I assume so. 22 Q Okay. The information that the Board of 23 Correction has would be the information supplied 24 to it by DOC, correct? 25 A Yes.</p>	Page 54	<p>1 A Okay. 2 Q Okay? 3 A Uh-huh. 4 Q Do you recognize this document? 5 A Yes. 6 Q Okay. And what is it? 7 A It's the housing area capacity data summary. 8 MR. KEENAN: Okay. Let's go a few 9 pages in Julia, if you could, please. 10 Q (By Mr. Keenan) Okay. And do you see this on 11 page 4 of Exhibit 6, Commissioner Feeney? 12 A Yes. 13 Q And this is a jail population census, correct? 14 A Yes. 15 MR. KEENAN: All right. And let's go 16 to Exhibit 7 now. This will be a letter from 17 legal aid. 18 MS. GOKHBERG: Which letter would you 19 like? 20 MR. KEENAN: It's in the outline. 21 It's -- the title is, "Defenders Letter to City," 22 dated November 6, 2020. 23 (Deposition Exhibit 7 marked.) 24 Q (By Mr. Keenan) Okay. This will be Exhibit 7. 25 Commission Feeney, have you seen Exhibit 7</p>	Page 56
<p>1 MR. KEENAN: All right. And let's go 2 to the next page, page after that and a page 3 after that and a page after that. 4 (Deposition Exhibit 6 marked.) 5 Q (By Mr. Keenan) Okay, let's now look at 6 Exhibit 6 which is an analysis report. 7 MR. THAYER: Can we just note for the 8 record that this is page 9 of the report, please. 9 MR. KEENAN: Sure. 10 MR. THAYER: Thank you. 11 MR. KEENAN: Sure. This analysis 12 report will be Exhibit 6. If you don't mind 13 pulling that up, Julia. 14 MS. GOKHBERG: Sorry. Just give me one 15 moment. 16 MR. KEENAN: Is this it? 17 MS. GOKHBERG: Yes. 18 MR. KEENAN: Okay, great. 19 Q (By Mr. Keenan) This is Exhibit 6. Do you 20 recognize this document, Commissioner Feeney? 21 A I'm back on page 1, it looks like the same Board 22 of Correction report. 23 Q I think it's a little different. This is titled, 24 "New York City Board of Correction Housing Area 25 Capacity Data Summary."</p>	Page 55	<p>1 before? 2 A No. 3 Q All right. I want to ask you, Commissioner 4 Feeney, about use of masks and gloves. What are 5 the policies and procedures for staff to wear 6 masks, let's start with masks, while they are at 7 work? 8 A Right now? 9 Q Yes. 10 A Right now, staff are required to wear face 11 coverings when at work. 12 Q At all times? 13 A When you're within six feet, it's mandated; it's 14 recommended if you're more than six feet between 15 people. 16 Q So what -- does that mean that basically it's -- 17 if you're in a housing area but you think as a 18 staff member that you could be more than six feet 19 from anybody else, that you could take off your 20 mask if you want? 21 A For a couple of minutes and then put it back on, 22 yes. 23 Q And what's the reason for allowing that? 24 A For following the City guidance in wearing masks. 25 Q What do you do to monitor whether staff members</p>	Page 57

<p>1 actually are wearing masks?</p> <p>2 A So we do several things. We have those audits I 3 spoke to that the captains do and that my staff 4 and the facility chief of operations staff do.</p> <p>5 Every supervisor and manager is 6 expected to remind the staff to put on their 7 mask; and if they're willfully not wearing them, 8 then discipline would be -- would be expected, 9 progressive discipline would be expected.</p> <p>10 And we also use the compliance and 11 safety center, which is a video monitoring unit 12 that I oversee, and that unit is meant to be a 13 pure mentoring unit. But while we're watching 14 video, if we see a staff member is not wearing a 15 mask, they get called by a peer and it's 16 recommended that they put their mask on, and most 17 of the time people have their mask and do put it 18 on.</p> <p>19 Q Has anyone ever been disciplined at Rikers for 20 not wearing a mask?</p> <p>21 A I don't know.</p> <p>22 Q Who would know? How would we find out?</p> <p>23 A Labor relations probably.</p> <p>24 Q What are the policies and procedures for wearing 25 masks and gloves while distributing food and</p>	Page 58	<p>1 COVID and related to food.</p> <p>2 MR. KEENAN: Let's go to what's going 3 to be Exhibit 8. This is the document that's -- 4 well, I should -- I think for the easiest way to 5 do this is to go to be to go through the 6 City's full production.</p> <p>7 Julia, do you have access to that 8 sequentially?</p> <p>9 MS. GOKHBERG: Yes.</p> <p>10 MR. KEENAN: Okay. So let's -- let's 11 just start going through that beginning with the 12 first document in the City's production. This 13 will be -- are we on Exhibit 8 now, Julia?</p> <p>14 MS. GOKHBERG: Yes, Exhibit 8.</p> <p>15 (Deposition Exhibit 8 marked.)</p> <p>16 Q (By Mr. Keenan) This will be Exhibit 8, 17 Commissioner Feeney. This is a one-page 18 document. Can you tell us what this is?</p> <p>19 A That's the directive that was issued on 20 September 24 that details the City's guidance for 21 wearing masks and mandated that staff where masks 22 and stay within six feet of another individual 23 and strongly recommended that they wear them when 24 they are greater than six feet.</p> <p>25 (Deposition Exhibit 9 marked.)</p>	Page 60
<p>1 medicine?</p> <p>2 A Okay, DOC staff does not distribute medication so 3 we don't have a policy regarding that.</p> <p>4 As far as distributing food, if you're 5 going to have direct hand contact with food, 6 you're required to wear gloves. That's the New 7 York State glove law from the health code.</p> <p>8 And folks should be wearing their masks 9 because you're going to be near people.</p> <p>10 Q And when you said direct hand contact with food, 11 would that -- would that include, you know, 12 handling a spoon or something else to serve food?</p> <p>13 A No. That's not direct hand contact. The health 14 code does not require, although it's generally 15 common practice, but the health code requires 16 wearing gloves when you have direct hand contact.</p> <p>17 Q Since COVID, have you reevaluated whether the 18 state health code that was enacted before COVID 19 is enough to protect against the transmission of 20 COVID?</p> <p>21 A COVID is inhaled. It's a droplet infection 22 that's inhaled, or if you touch your eyes, your 23 nose then your mouth and you've touch the virus, 24 you catch it. It's not a food-borne illness, so, 25 no, I didn't spend a lot of time thinking about</p>	Page 59	<p>1 Q (By Mr. Keenan) Okay. And let's go to the 2 next document in the City's production. This 3 will be Exhibit 9. This is a six-page 4 document, Exhibit 9. It is -- can you tell us 5 what Exhibit 9 is?</p> <p>6 A Oh, it appears to be a letter from our general 7 counsel Heidi Grossman to The Bronx Defenders.</p> <p>8 Q And what is this letter about?</p> <p>9 A About a letter that The Bronx Defenders wrote in 10 response to your September 11 regarding COVID 11 pandemic procedures.</p> <p>12 Q Let's just page through it. Were you involved in 13 the drafting of this letter?</p> <p>14 A Yes.</p> <p>15 Q In what way were you involved?</p> <p>16 A The legal division reviewed the policies that we 17 had in place to make sure that they were the most 18 current policies.</p> <p>19 (Deposition Exhibit 10 marked.)</p> <p>20 Q (By Mr. Keenan) Let's go to the next document 21 in the City's production. This will be Exhibit 22 10, I believe. What is Exhibit 10, 23 Commissioner Feeney?</p> <p>24 A It's Teletype HQ-01077-0 issued on April 18th, 25 2020, that's outlining the department's policies</p>	Page 61

<p>1 for distributing masks to our incarcerated 2 personnel.</p> <p>3 Q You said to incarcerated personnel?</p> <p>4 A Incarcerated persons.</p> <p>5 Q Okay. What is a teletype order?</p> <p>6 A Teletype is an order from the chief that tells 7 the department what needs to be done.</p> <p>8 Q And is every staff member given a teletype order 9 when one is issued?</p> <p>10 A They might -- they may not be given it by hand 11 but it's read at roll-call and the supervisors 12 for, in my case, like for a non-uniformed 13 manager, I'm required to inform my staff of 14 what's in these teletypes, plus they are also 15 available on our intranet.</p> <p>16 Q Are masks available to all inmates at the present 17 time?</p> <p>18 A Yes.</p> <p>19 Q Okay. How often are inmates given new masks?</p> <p>20 A It can be given whenever they ask for them.</p> <p>21 Every day the facility has to give an inventory 22 of what masks were issued to the chiefs and they 23 get replenished as necessary. So I believe 24 they're delivering and maintaining 40 a couple of 25 times a week, two or three times a week in each</p>	Page 62	<p>1 Q Let's go to the next document in the City's 2 production. This will be exhibit --</p> <p>3 MR. KEENAN: Will it be 14, Julia?</p> <p>4 MS. GOKHBERG: Yes, 14.</p> <p>5 THE WITNESS: We did this one already.</p> <p>6 MR. KEENAN: I'm sorry?</p> <p>7 THE WITNESS: We did this one already, 8 it's the directive on wearing masks.</p> <p>9 Q (By Mr. Keenan) Okay. And I think that this 10 was maybe produced twice in the City's 11 production. So this is the directive on 12 wearing masks, Exhibit 14?</p> <p>13 A Uh-huh.</p> <p>14 Q Is that a yes?</p> <p>15 A Yes.</p> <p>16 Q Okay. All right. We just have to get that down 17 on the transcript.</p> <p>18 (Deposition Exhibit 15 marked.)</p> <p>19 Q (By Mr. Keenan) Let's go to the next document 20 in the City's production, which is Exhibit 15.</p> <p>21 A This is a teletype issued on March 22nd about 22 personal protective equipment and authorized 23 masks, and that was issued by both Commissioner 24 Brann and chief of the department.</p> <p>25 (Deposition Exhibit 16 marked.)</p>	Page 64
<p>1 housing area. But if a facility needs more, they 2 can ask and get them, you know, we have them.</p> <p>3 (Deposition Exhibit 11 marked.)</p> <p>4 Q (By Mr. Keenan) Let's go to the next document 5 in the City's production. This will be Exhibit 6 11.</p> <p>7 A So this is a teletype from March 6 issued by the 8 commissioner talking about the COVID-19 outbreak 9 in China.</p> <p>10 (Deposition Exhibit 12 marked.)</p> <p>11 Q (By Mr. Keenan) Let's go to the next document 12 in the City's production. This will be Exhibit 13 12, I believe.</p> <p>14 A All right. This is a teletype issued July 23, 15 2020, again by the commissioner, talking about 16 the travel advisory and COVID-19.</p> <p>17 MR. KEENAN: Let's go to the next 18 document, please, Julia.</p> <p>19 (Deposition Exhibit 13 marked.)</p> <p>20 Q (By Mr. Keenan) This is Exhibit 13. What is 21 Exhibit 13, Commissioner Feeney?</p> <p>22 A It is a teletype issued on September 24 by chief 23 of the department Hazel Jennings and it's again 24 reiterating how staff is to protect themselves 25 against COVID-19.</p>	Page 63	<p>1 Q (By Mr. Keenan) Let's go to the next document 2 in the City's production, it will be Exhibit 3 16.</p> <p>4 A This is a teletype issued March 10th, 2020 by 5 First Deputy Commissioner Angel Villalona talking 6 about the leave policy at the time regarding some 7 employees at risk for COVID-19.</p> <p>8 Q And by the way, would you agree with me that the 9 Department of Correction has a duty to provide 10 reasonable accommodations to inmates with 11 disabilities?</p> <p>12 A Yes.</p> <p>13 Q Okay. And that can include extra protective 14 measures for inmates who are especially 15 vulnerable to COVID-19, correct?</p> <p>16 A Yes.</p> <p>17 Q Let's go to the next document in the City's 18 production, please.</p> <p>19 A This is teletype issued on March 22nd about the 20 leave policy applicable during the outbreak of 21 COVID-19.</p> <p>22 MR. KEENAN: And which exhibit number 23 is this going to be, Julia?</p> <p>24 MS. GOKHBERG: 17, I believe.</p> <p>25 MR. KEENAN: So this is going to be</p>	Page 65

<p>1 Exhibit 17 right here. 2 (Deposition Exhibit 17 marked.) 3 (Deposition Exhibit 18 marked.) 4 Q (By Mr. Keenan) Let's go to the next document 5 in the City's production which will be Exhibit 6 18. This starts at Bates stamp NYC29. Exhibit 7 18, can you tell us what that is, Commissioner 8 Feeney? 9 A This is a teletype issued on March 28 from Chief 10 Jennings regarding the implementation of 11 televisits. 12 Q Okay. Let's go to the next document in the 13 City's production. This will be Exhibit 19. 14 MR. KEENAN: Is that correct? 15 MS. GOKHBERG: Yes. 16 (Deposition Exhibit 19 marked.) 17 Q (By Mr. Keenan) Okay. What is Exhibit 19, 18 Commissioner Feeney? 19 A Teletype issued on April 3rd by the chief and the 20 commissioner about the distribution of masks. 21 Q Okay. Has that been updated in any way since 22 then? 23 A April 3rd? I don't believe so. 24 Q Okay. 25 A Except for the directive.</p>	Page 66	<p>1 Q (By Mr. Keenan) Let's go to Exhibit 21, the 2 next document in the City's production. What 3 is this, Commissioner? 4 A This is a teletype from March 12th, 2020 from the 5 commissioner regarding visitors and COVID-19 6 procedures. 7 (Deposition Exhibit 22 marked.) 8 Q (By Mr. Keenan) Let's go to the next document 9 in the City's production, it will be Exhibit 10 22. What is Exhibit 22? 11 A That is an operations order that was issued on 12 September 14th about the use of infrared camera 13 and hand-held infrared thermometers regarding 14 screening process. 15 MR. KEENAN: I think the next one will 16 be Exhibit 23. Is that correct, Julia? 17 (Deposition Exhibit 23 marked.) 18 A This is the elimination -- 19 MS. GOKHBERG: Yes. 20 A -- of sexual abuse and sexual harassment 21 directive. 22 Q (By Mr. Keenan) Okay. And this has been in 23 place since before COVID, correct? 24 A Yes. It was May 31st, 2019. 25 Q And what is the purpose of this directive?</p>	Page 68
<p>1 Q Let's go to Exhibit -- I'm sorry, say that again. 2 A Except for the directive. 3 Q Okay. The directive we talked about earlier that 4 was issued in September? 5 A Right. 6 Q The one-page directive? 7 A Right. 8 (Deposition Exhibit 20 marked.) 9 Q (By Mr. Keenan) Let's go to the next document. 10 It will be Exhibit 20. 11 A I think this is teletype issued May 26th from the 12 commissioner and the chief regarding distribution 13 of cotton fabric masks to incarcerated persons. 14 Q What type of masks are being made available to 15 inmates at this time? 16 A Predominantly surgical masks, but we did 17 receive -- I believe it was -- what's that 18 word -- donations, donation of cotton fabric 19 masks. And the chief distributed those to the 20 incarcerated persons. 21 Q How many cotton fabric masks? 22 A I don't know how many. 23 Q Who was the donation received from? 24 A I don't know. 25 (Deposition Exhibit 21 marked.)</p>	Page 67	<p>1 A This directive goes through our procedures for 2 eliminating sexual abuse and sexual harassment. 3 Q Okay. And let's go to page 45 of this document. 4 MR. KEENAN: And can we go back to the 5 prior page, Julia. 6 Q (By Mr. Keenan) So that's -- you recognize the 7 elimination of sexual abuse and sexual 8 harassment policy dated May 31st, 2019 is 44 9 pages long, correct? 10 A Yes. 11 Q Then we go to the next page in Exhibit 23, it's a 12 listing of telephone numbers, correct? 13 A Yes. 14 Q And let's go after that. Are these all -- do you 15 recognize -- this is a 138-page document. Do you 16 know if all of the attachments -- all the 17 components of this 138-page document relate to 18 sexual assault and sexual harassment of prison 19 rape elimination? 20 A I believe so. 21 Q And you're familiar, very familiar with the 22 City's policies on this topic, correct? 23 A Yes. 24 Q Okay. In fact, there's a federal mandate to 25 develop policies on prison rape elimination,</p>	Page 69

<p>1 correct?</p> <p>2 A Yes.</p> <p>3 (Deposition Exhibit 24 marked.)</p> <p>4 Q (By Mr. Keenan) Let's go to Exhibit 24,</p> <p>5 please. It will be the next document in the</p> <p>6 City's production.</p> <p>7 A This is Directive 4514R-A issued on October 19,</p> <p>8 2007 regarding housing area logbooks.</p> <p>9 Q And we see Exhibit 24 is a rather large document,</p> <p>10 143 pages long, and just going to go through that</p> <p>11 very quickly. What are housing area logbooks?</p> <p>12 A Logbooks are bound notebooks, for lack of a</p> <p>13 better thing, that are lined with number of</p> <p>14 pages, and it's where everything that happens in</p> <p>15 the housing area is recorded.</p> <p>16 Q Let's now go to page 8 of this Exhibit 24 and</p> <p>17 tell us what that is.</p> <p>18 A That's Directive 3901R-B, it is our directive</p> <p>19 regarding housekeeping procedures and it became</p> <p>20 effective April 4th, 2014.</p> <p>21 Q Now, it's my understanding you have a</p> <p>22 professional background in sanitation, correct?</p> <p>23 A Yes.</p> <p>24 Q What -- tell us what certifications you have in</p> <p>25 sanitation and what training you've had.</p>	<p>Page 70</p> <p>1 A Yes.</p> <p>2 Q Were you the primary author or one of the primary</p> <p>3 authors?</p> <p>4 A Yes.</p> <p>5 Q Is this manual still enforced?</p> <p>6 A It is, but it's been upgraded for COVID. So</p> <p>7 there's one change that we had to make in the</p> <p>8 cleaning and sanitizing procedures with COVID.</p> <p>9 We apply the sanitizer an additional time so the</p> <p>10 surface stays wet for ten minutes.</p> <p>11 Q Do you know if that's reflected here?</p> <p>12 A It's not reflected in this, no. It's reflected</p> <p>13 in a PowerPoint that's distributed during all of</p> <p>14 the training.</p> <p>15 Q Okay.</p> <p>16 A And it's been sent out in writing to all of the</p> <p>17 facilities so that they have it as well.</p> <p>18 Q And following this, there are various attachments</p> <p>19 that relate to sanitation, correct?</p> <p>20 A Yes.</p> <p>21 Q All right. Let's go to page 53 of Exhibit 24.</p> <p>22 A This is our directive of the exposure control</p> <p>23 plan.</p> <p>24 Q And what's -- can you sum up for us what the</p> <p>25 purpose of this directive is?</p>
<p>1 A I'm a registered sanitarian in the State of New</p> <p>2 York and I've been in the environmental health</p> <p>3 field since 1989, and worked on writing many of</p> <p>4 these policies with our colleagues in legal aid</p> <p>5 and consultants.</p> <p>6 Q What is the -- what is a registered sanitarian?</p> <p>7 I don't -- I don't know that I've encountered</p> <p>8 that exact term.</p> <p>9 A A public health sanitarian is the civil service</p> <p>10 title for a health inspector. And back when I</p> <p>11 was a young health inspector, we had the New York</p> <p>12 state registry of sanitarians and you took a test</p> <p>13 and became a registered sanitarian in the State</p> <p>14 of New York.</p> <p>15 Q And what are the -- what are the principles of</p> <p>16 the sanitation field, what are the goals of</p> <p>17 sanitation?</p> <p>18 A Prevent disease, prevent vermin activity, to</p> <p>19 create a healthful environment.</p> <p>20 Q Let's go to page 26 of this Exhibit 24.</p> <p>21 A This is the Cleaning and Sanitizing Manual issued</p> <p>22 November 2013.</p> <p>23 Q And were you involved in the creation of the New</p> <p>24 York City Department of Correction Cleaning and</p> <p>25 Sanitizing Manual?</p>	<p>Page 71</p> <p>1 A The exposure control plan was written in response</p> <p>2 to an OSHA -- the bloodborne pathogen standards</p> <p>3 and it's the policies that we follow if somebody</p> <p>4 has been exposed to a bloodborne pathogen.</p> <p>5 Q Okay. Let's go to page 72 of this document,</p> <p>6 please. Exhibit 24, page 72.</p> <p>7 A This is a teletype that was issued in October 16</p> <p>8 of 2012 discussing Liberty 670 and 671 which was</p> <p>9 a general cleaner and disinfectant that we used</p> <p>10 at that time.</p> <p>11 Q Okay. What are -- what are the general cleaners</p> <p>12 and disinfectants used at this time?</p> <p>13 A I'm sorry, can you say that again?</p> <p>14 Q What are the general cleaners and disinfectants</p> <p>15 being used at this time?</p> <p>16 A Oh. There's Diversity products, the general</p> <p>17 cleaner is called General Cleaner 15, and the</p> <p>18 disinfectant is called Virex 256.</p> <p>19 Q Let's go to page 73, please.</p> <p>20 A This is Directive 3900R issued on April 4th,</p> <p>21 2014, and it describes our environmental health</p> <p>22 program.</p> <p>23 Q What is the environmental health program?</p> <p>24 A The environmental health program is our overall</p> <p>25 environmental health program that deals with</p>

<p>1 sanitation, vermin control, infections. It 2 describes what is expected of the different 3 titles in the department that deal with 4 environmental health. It describes what we're 5 responsible for.</p> <p>6 Q Okay. Now let's go to page 95, please.</p> <p>7 A This is Directive 4020R-A, it's a directive 8 dealing with the department's definitions of 9 inmate categories.</p> <p>10 Q And can you sum up for us what -- what this is?</p> <p>11 A It's the definition of the different types of 12 individuals that we -- that we have, whether in 13 general population or they have another category 14 of mental health, whatever would be defined in 15 this directive.</p> <p>16 Q Okay. Let's go to page 102, please, of Exhibit 17 24. Commissioner Feeney, can you tell us what 18 starts on page 102 here?</p> <p>19 A This is Directive 6002 that deals with attorney 20 visits.</p> <p>21 Q Then on page 110, is this a teletype that 22 describes some amendments to the attorney visits 23 directive policy? Is that a yes?</p> <p>24 A Yes.</p> <p>25 Q And we see some further -- further teletype about</p>	Page 74	<p>1 details during COVID or are they kept off of work 2 detail?</p> <p>3 A What do you mean by medically vulnerable detail?</p> <p>4 Q People with underlying conditions that would make 5 them especially vulnerable to COVID were they to 6 contract such as asthma or being 7 immunocompromised in some way. Are people with 8 asthma or with a compromised immune system placed 9 on work details or not placed on work details 10 during COVID?</p> <p>11 A So the general DOC staff member has no idea what 12 an inmate's medical conditions are. For them to 13 work in the barber shop or in kitchens, they have 14 to have a medical -- be medically cleared to work 15 in those two areas. I don't know of any other 16 work that requires medical clearance for an 17 individual to work.</p> <p>18 (Deposition Exhibit 25 marked.)</p> <p>19 Q (By Mr. Keenan) Let's go to what will be 20 Exhibit 25. It will be the next item in the 21 City's production, I think actually the last 22 item in the City's production.</p> <p>23 A All right. This is the division assignments, I 24 cannot read the effective date on this. I think 25 it says January 8, 2020, but I'm not sure. And</p>	Page 76
<p>1 that on page 112, correct?</p> <p>2 A Yes.</p> <p>3 Q And following that there is some more guidance 4 about attorney visits and similar visits, 5 correct?</p> <p>6 A Well, this updates operations order 110, not the 7 directive, but, yes, it deals with attorney 8 visits.</p> <p>9 Q Let's go to page 118, please.</p> <p>10 A This is a teletype from April 3rd, 2013 dealing 11 with procedures for all ports of entry.</p> <p>12 Q Then let's go to page 120, please.</p> <p>13 A This is Directive 6000R-A, effective April 7th, 14 2005, regarding attorney, legal, and official 15 visits.</p> <p>16 Q And then we see following that some further 17 teletypes relating to ports of entry and attorney 18 and related visits, correct?</p> <p>19 A Yes.</p> <p>20 Q And then let's go to page 137, please, of 21 Exhibit 24. Can you tell us what this is, 22 Commissioner Feeney?</p> <p>23 A This is Directive 3255R, issued June 18th, 2014, 24 regarding assignment of inmates to work details.</p> <p>25 Q Are medically vulnerable inmates assigned to work</p>	Page 75	<p>1 this document identifies the wardens and the 2 deputy wardens and the command and who report to 3 who.</p> <p>4 Q Okay. I want to go back to a question we 5 explored earlier of hand sanitizer, the idea of 6 having dispensers that would be placed out for 7 people to go get a squirt of hand sanitizer.</p> <p>8 First question, very basic question, I 9 assume, certainly by this point, you have seen 10 dispensers or hand sanitizer be placed in public 11 places and you've used one, correct?</p> <p>12 A Yes.</p> <p>13 Q Okay. So you're familiar with the idea that you 14 would have a dispenser and it's either on a stand 15 or bolted to a wall or some other secure surface, 16 somebody can put their hand under it and get an 17 automatic scoop of hand sanitizer and then 18 sanitize their hands, correct?</p> <p>19 A Yes.</p> <p>20 Q Has the Department of Correction even explored or 21 considered the possibility of placing dispensers 22 of that nature either on a stand or bolted to a 23 secure surface in collective areas of housing 24 units such as mess halls, cafeterias or communal 25 rooms?</p>	Page 77

<p>1 A Okay, so most inmates don't go to mess halls, 2 they eat in their housing areas. And I think 3 about it a lot, what's the best and the safest 4 things to do. And the risks associated with the 5 hand sanitizers to me, when there are sinks and 6 soaps and water available, is not worth the risk. 7 Sanitizer, itself, can be used as a 8 weapon, the dispenser can be used as a weapon, 9 and there are -- there are sinks with soap and 10 water that are monitored and audited multiple 11 times on a daily basis to make sure that there is 12 soap and water present. 13 So weighing those things, I don't think 14 it's worth the risk to put alcohol-based hand 15 sanitizer in inmate occupied areas. 16 Now, during H1N1 when non-alcohol-based 17 hand sanitizer was effective, we did do that in 18 certain areas, but not alcohol-based, it's too 19 potentially dangerous. 20 Q Okay. So let's talk about H1N1, you used a 21 non-alcohol-based sanitizer, correct? 22 A Uh-huh. 23 Q Is that a yes? 24 A Yes. 25 Q And how did you dispense that non-alcohol-based</p>	<p>Page 78</p> <p>1 you put it in the dispenser with a cage or a 2 covering around it in collective areas, correct? 3 A In dayrooms. 4 Q Dayrooms, okay. 5 A Uh-huh. 6 Q And by the way, is it the policy to have a staff 7 member or corrections officer present in a 8 dayroom at any given point in time? 9 A Some places have specific dayroom officers. Most 10 places just have an officer that controls the 11 whole housing area. 12 Q Okay. All right. And are there video cameras in 13 dayrooms? 14 A There are now. 15 Q Okay. Not then but there are now? 16 A I don't remember if there were any then or not, 17 but they are now. 18 Q What matters is there are video cameras 19 monitoring all dayrooms at this time, correct? 20 A Yes. 21 Q And those video cameras can be monitored from a 22 central command center or control center? 23 A They aren't generally monitored from a command 24 center all the time, no. 25 Q Okay. But they could be, correct?</p>
<p>1 hand sanitizer? 2 A It was in a dispenser that was like in a cage. 3 Q Okay. Describe for me what that looks like. 4 A So there was a dispenser, a regular dispenser 5 that we put locked covering on. 6 Q Okay. 7 A And it got destroyed, too. 8 Q It got -- what got destroyed? 9 A The dispenser, they were vandalized. 10 Q Vandalized in what way? 11 A Pieces of the hard plastic were broken off. 12 Q And did anybody -- do you have any documented 13 instances of turning -- anybody turning one of 14 those dispensers into a weapon? 15 A I don't know. 16 Q All right. And out of how many dispensers -- how 17 many dispensers did you put out during H1N1 in 18 Rikers? 19 A I don't know off the top of my head. 20 Q Several dozen at least? 21 A I don't know if that many, but there were some. 22 Q Were all of them destroyed, were some of them 23 destroyed, only one of them destroyed? 24 A I don't know the number that were destroyed. 25 Q And so you -- this non-alcohol-based sanitizer,</p>	<p>Page 79</p> <p>1 A They could be. 2 Q Okay. You could -- you could just have a live 3 feed into the command center, right? 4 A It's probably -- 5 Q It's feasible? 6 A To do it, yes. 7 Q Okay. So you're familiar with the idea of 8 somebody getting a squirt of hand sanitizer and 9 there are some that have a gel and some that do a 10 foam, correct? 11 A Yes. 12 Q Okay. Are you -- have you ever heard of anybody 13 lighting a foam-based sanitizer on fire or using 14 it as a weapon? 15 A If it's alcohol-based, it can be a flammable. 16 Q Have you ever heard or seen any reports? 17 A In fact, there was a woman in the news not long 18 ago, maybe a month ago, who got seriously burned 19 from hand sanitizer. 20 Q Where? What -- what news -- 21 A It was on -- it was on the regular news, Channel 22 7, Channel 4, she got very badly burned from hand 23 sanitizer. 24 Q Well, you know, I'm trying to get to the root of 25 what are -- what are likely dangers, not</p>

<p>1 theoretical dangers. This is somebody -- 2 somebody in the New York area who got a chemical 3 burn from a hand sanitizer? 4 A No. She actually lit herself on fire. 5 Q Okay. So this is one instance in this being 6 reported in the news in a city of over 8 million 7 people, correct? 8 A Yeah. So I have to, as a person who's 9 responsible for environmental health and safety, 10 look at the whole big picture. So, to me, the 11 big picture is really clear, the CDC says when 12 there's soap and a sink available, that is their 13 recommended practice for you washing your hands. 14 They recommend the use of hand 15 sanitizer only when that and that soap are not 16 available. 17 I have a population that does set 18 fires, and I don't know the number because I'm 19 on -- off the top of my head, but we have fires 20 set often in the facility. 21 So I have to make sure my staff is 22 safe. I have to make sure the other individuals 23 are safe. And, to me, it's not worth the risk, 24 and I'm the one who answers for it if something 25 happens.</p>	<p>Page 82 1 weekends. 2 For the amount of time an individual is 3 walking through the corridor until they get to 4 their location, they can wash their hands in the 5 location that they're in. 6 I have not seen lines and lines of 7 individuals waiting to get to sinks. I have not 8 had any complaints from individuals directly that 9 they can't get access to a sink with soap and 10 water. So I believe we've made the correct and 11 safe decision for both the inmate population and 12 for our staff. 13 Q You -- let me ask you this question while we're 14 on the sanitizer topic, hand sanitizer. Are you 15 aware of any instance in which any inmate 16 anywhere has assaulted a staff member or lit a 17 staff member on fire using hand sanitizer? 18 A No. 19 Q Question about -- 20 A By the way, rate every single chemical we use as 21 to whether it's safe that we use in a 22 correctional setting, and I apply that same 23 principle to the hand sanitizer that I do when we 24 want to utilize the new sanitation chemical or a 25 new paint or the maintenance chemical, we go</p>
<p>1 It is not worth the risk when there are 2 sinks and soap and water present to provide an 3 alcohol-based hand sanitizer that if it gets 4 thrown on someone, and the individuals splash our 5 staff regularly with urine, feces and other 6 liquids, that should they ignite that, a person 7 will go up like a Molotov cocktail. 8 So we can go back and forth about 9 whether it's possible to put a hand sanitizer 10 dispenser in a housing area, and, yes, it is, but 11 it's also potentially very dangerous and I'm not 12 willing, under my need and responsibility, to say 13 that we should do that when there is a CDC 14 recommended way to wash your hand available in 15 the housing unit. 16 Q But you're assuming that all inmates have easy 17 and quick and safe access to sinks with warm 18 water and soap at all times, that's -- you're 19 making that assumption, aren't you? 20 A I'm not assuming. I've walked the jails every 21 day every week for 30 years. I know that sinks 22 and soap are available. 23 We have a very strict three-tiered 24 level audit procedure in place that checks these 25 things on a daily basis, including on the</p>	<p>Page 83 1 through the same procedure to decide if we feel 2 it's safe or not. 3 Q How are foams in visiting areas or phone call 4 areas sanitized? 5 A They are sanitized by the house detail and we 6 have a bucket with the Virex available right at 7 the phone area and the Virex gets changed out two 8 or three times a tour, and the individual can 9 sanitize the phone before and after they are used 10 if they want to do it in addition to what the 11 house detail does. 12 Q And what -- what device would they use to 13 actually wipe down the phone? 14 A The sponge. 15 Q Okay. And after you wipe down the phone? 16 A They can go to the bathroom and wash their hands. 17 Q While you're leaving the phone like off the hook 18 or something? 19 A Well, we've got a drier that we use anyway. Most 20 people don't pick up a wet phone. 21 Q How long does it take to get from the phone to 22 the bathroom and back? 23 A Two minutes. 24 Q Do you distribute paper towels to use Virex with 25 or --</p>

<p>1 A Sponges. You have to allow it to air dry. You 2 don't want to wipe off the Virex when you're 3 done. Virex works by the amount of contact time 4 that the chemical has with the Virex. If you put 5 it on and wipe it off, if you dry it, you're 6 removing the contact time. 7 Q Does Virex have any toxicity to it or any 8 potential health threats to anyone who is exposed 9 to it? 10 A No long-term sustaining health effects, no. 11 Q Any short-term? 12 A You might get a little skin irritation, which is 13 why we issue yellow gloves and goggles when they 14 are being used. 15 Q By inmates or just by staff? 16 A No. By the incarcerated individuals who are 17 using it. 18 Q And are those goggles cleaned after use? 19 A Yes, they are cleaned in the Virex and hung to 20 air dry in the janitor closet. 21 Q How about the yellow gloves? 22 A Same thing. 23 MR. KEENAN: Why don't we take about a 24 five-minute break here. 25 (Brief recess.)</p>	<p>Page 86 1 since they were built, so the HVAC systems are 2 fairly, you know, last 20 years or so. 3 Q Do you -- have any changes been made to 4 ventilation since COVID came in, whether it's the 5 installation of new filters or changing HVAC 6 processes or equipment or anything like that? 7 A It's my understanding that we are in compliance 8 with the recommendations with the MERV 13 and the 9 filter and we have increased the outside air in 10 the facilities, but I couldn't give you the 11 specifics on each facility's ventilation system. 12 Q And when you said increasing the outside air, 13 tell us, is it entirely outside air that's being 14 brought in or is air being recirculated? 15 A I believe right now it's all outside air. 16 Q Okay. Who -- who would know for sure? 17 A Alex Mahoney. 18 Q And who is Alex Mahoney? 19 A He is the executive director for our facilities' 20 maintenance and repair division. 21 Q And you said the MERV 13 filters, tell us about 22 that. 23 A Okay. Again it's a level of filtration. You 24 would have to get -- I don't know the exact -- 25 Q That's --</p>
<p>1 Q (By Mr. Keenan) Ms. Feeney, we are back on the 2 record. I want to ask you about ventilation. 3 How old are the buildings at Rikers? 4 A They are all different ages. NIC is quite old, 5 it's one of the earlier buildings on the island. 6 And OBCC and Rose M. Singer were the newest 7 constructed building. I think our newest 8 editions were put in -- well, Rose M. Singer, the 9 newest edition, was put in a few years ago. And 10 OBCC and GRBC newest editions were put in the 11 late '80s, I believe. 12 Q How old is NIC? 13 A I don't know exactly, but 1930s-ish, the main 14 building. 15 Q The HVAC system, HVAC in NIC, do you know when it 16 was installed? 17 A It was upgraded several years ago when they 18 air-conditioned the building. 19 Q When they air-conditioned the building? 20 A Yes. 21 Q Okay. Do you know how old the HVAC systems are 22 at the other -- other facilities in Rikers? 23 A The RNDC HVAC system was also just upgraded. 24 Rose M. Singer and GRVC and OBCC are relatively 25 new buildings so they have not been upgraded</p>	<p>Page 87 Page 89 1 A I don't know. I just know that Alex told me we 2 were in compliance compliant with the MERV 13 3 mandate. 4 Q But Alex Mahoney would probably be the person to 5 talk to about that? 6 A Absolutely. 7 (Deposition Exhibit 26 marked.) 8 MR. KEENAN: Let's look at a few new 9 exhibits. I think this will be 26 now. This is 10 a progress report cover letter. If you could 11 pull that up, please, Julia. 12 Q (By Mr. Keenan) You'll see this is a cover 13 letter. Do you recognize this document? 14 A Yes, I do. 15 Q What is it? 16 A It's a report from the Office of Compliance 17 Consultants, dated October 15, 2020. 18 Q And can you sum up for the record what the Office 19 of Compliance Consultants is? 20 A They're an oversight agency for the federal 21 court, for the Benjamin court case. 22 Q This is for the consent decree that's in place in 23 the Benjamin case? 24 A Yes. 25 Q Okay. Have you -- do you review the progress</p>

<p>1 reports that are made by the Office of Compliance 2 Consultants?</p> <p>3 A I do.</p> <p>4 Q And how often are reports made by the OCC, Office 5 of Compliance Consultants?</p> <p>6 A They are supposed to be quarterly.</p> <p>7 Q Are they actually made on a quarterly basis or is 8 that objective not always met?</p> <p>9 A No, that's pretty much always done on a quarterly 10 basis.</p> <p>11 Q Let's next look at the May through August 2020 12 report on environmental conditions. This will be 13 Exhibit 26. This is an attachment to the most 14 recent compliance report, correct?</p> <p>15 A Yes.</p> <p>16 Q Okay. Are you --</p> <p>17 MS. GOKHBERG: This is Exhibit 27.</p> <p>18 Sorry.</p> <p>19 MR. KEENAN: Twenty-seven. Thank you 20 very much, Julia. This will be Exhibit 27.</p> <p>21 (Deposition Exhibit 27 marked.)</p> <p>22 Q (By Mr. Keenan) Do you recognize Exhibit 27, 23 this 34-page document, report?</p> <p>24 A I recognize the cover page, yes.</p> <p>25 Q Okay. Were you -- have you reviewed the contents</p>	<p>Page 90</p> <p>1 attachment one, PHS findings for Vacant Cell 2 observations. This is a 24-page document, 3 Exhibit 28. Do you recognize this document, 4 Commissioner Feeney?</p> <p>5 A Yes.</p> <p>6 Q What is it?</p> <p>7 A Again, it's the staff of OCC taking a complete 8 report for my unit and picking out bits and 9 pieces of it and putting it into these charts, 10 and then indicating that the entire area would be 11 unclean because of one thing, which is not a 12 protocol that we utilize.</p> <p>13 Q And it's your understanding, you're much more 14 familiar with the Benjamin litigation than I am, 15 who -- who does the Office of Compliance 16 Consultants work for, basically who pays for it 17 and who do they report to?</p> <p>18 A I believe the department pays for it, but they 19 report to the federal court.</p> <p>20 Q Okay. And do you -- do you have an opinion of 21 the Office of Compliance Consultants and what -- 22 do you think they're fair or unfair to the 23 department, or have some other opinion of them?</p> <p>24 A I don't have a fair or unfair opinion. I just 25 think that they evaluate the data differently</p>
<p>1 of it?</p> <p>2 A Yes.</p> <p>3 (Deposition Exhibit 28 marked.)</p> <p>4 Q (By Mr. Keenan) Okay. And then let's bring up 5 Exhibit 28.</p> <p>6 Do you -- do you agree with the 7 contents of it, when you reviewed it?</p> <p>8 A No, not often.</p> <p>9 Q I'm sorry, say that again.</p> <p>10 A No, I don't, not often.</p> <p>11 Q You do not often agree with what's being said in 12 the Office of Compliance Consultants' reports?</p> <p>13 A That's correct.</p> <p>14 Q Okay. Tell me -- tell me more about that, that 15 you do not often agree with the OCC's reports.</p> <p>16 A They make assumptions based on taking my unit's 17 reports and pulling them apart and putting them 18 back together in different ways that we don't 19 agree with. According to our evaluation of the 20 sanitation, the department has a compliance 21 rating of over 80 for ours.</p> <p>22 MR. KEENAN: Okay. Let's -- let's go 23 to the next exhibit. Will it be 28, Julia?</p> <p>24 MS. GOKHBERG: Yes.</p> <p>25 Q (By Mr. Keenan) Okay. Exhibit 28, it's</p>	<p>Page 91</p> <p>1 than we did.</p> <p>2 (Deposition Exhibit 29 marked.)</p> <p>3 Q (By Mr. Keenan) Let's go to Exhibit 29. This 4 is attachment two to the PHS findings. Do you 5 recognize Exhibit 29? It's a 28-page document.</p> <p>6 A Yes.</p> <p>7 Q What is it?</p> <p>8 A It's the same thing, it's another table that the 9 OCC staff put together from the DOC staff 10 inspection report.</p> <p>11 (Deposition Exhibit 30 marked.)</p> <p>12 Q (By Mr. Keenan) Let's look now at Exhibit 30, 13 it's attachment three. It's a nine-page 14 document. Commissioner Feeney, do you 15 recognize Exhibit 30 titled, "Surfaces (not) 16 Smooth and Easily Cleanable"?</p> <p>17 A Yes.</p> <p>18 Q What is -- what is Exhibit 30?</p> <p>19 A It's the same thing. It's another table that OCC 20 put together from DOC's inspection report.</p> <p>21 (Deposition Exhibit 31 marked.)</p> <p>22 Q (By Mr. Keenan) And then let's look at Exhibit 23 31, it's attachment four. Commissioner Feeney, 24 do you recognize Exhibit 31, a five-page 25 document?</p>

<p>1 A Yes.</p> <p>2 Q And it's titled, "Ventilation," correct?</p> <p>3 A Yes.</p> <p>4 Q Okay, what -- what is this document?</p> <p>5 A It's the exact same thing.</p> <p>6 Q Okay.</p> <p>7 A It's a table that OCC put together from DOC</p> <p>8 inspection report.</p> <p>9 Q And these would be places where dirty vents or</p> <p>10 lack of ventilation was found and things like</p> <p>11 that?</p> <p>12 A It's a place where they cited dirty vents for</p> <p>13 partially occluded vents, yes.</p> <p>14 Q Okay. Do you believe that any -- that any of the</p> <p>15 information contained here is just inaccurate or</p> <p>16 not -- that is flat out untrue, or do you -- do</p> <p>17 you think that it's just not representative of</p> <p>18 the facility as a whole?</p> <p>19 A I think it's not representative of the area</p> <p>20 that's being inspected as a whole. Just because</p> <p>21 a wall vent may be dirty doesn't mean that the</p> <p>22 airflow -- that the air can't flow through it.</p> <p>23 If an outside of a vent is dirty doesn't</p> <p>24 necessarily mean air can't flow through. I think</p> <p>25 that they -- that's what I think.</p>	<p>Page 94</p> <p>1 A DOC doesn't do medical evaluations of the</p> <p>2 incarcerated individuals, nor are we -- nor do we</p> <p>3 have that information available to us.</p> <p>4 So if the medical provider tells us</p> <p>5 that people are at risk, we work to get them --</p> <p>6 to get them released from prison -- from jail.</p> <p>7 Q Do you do anything within the facility among</p> <p>8 people who are still incarcerated to determine</p> <p>9 who's -- who's high risk, who's medium risk,</p> <p>10 who's low risk, and to take protective measures</p> <p>11 within the facilities in which those people are</p> <p>12 housed according to risk level?</p> <p>13 A So again, if the medical staff tells us that</p> <p>14 individuals are higher risk -- so we cohorted our</p> <p>15 older inmates in NIC during COVID, that's because</p> <p>16 medical told us that this number of inmates were</p> <p>17 at risk and they wanted them housed at NIC closer</p> <p>18 to the medical staff, closer to the infirmary</p> <p>19 areas, and we did that.</p> <p>20 But DOC, itself, does not have access</p> <p>21 to an individual's medical information so we</p> <p>22 could not make that assessment.</p> <p>23 Q I want to next ask you about outtakes. How do</p> <p>24 you -- how do you process or discharges from</p> <p>25 Rikers? You test inmates before discharging them</p>
<p>1 Q Okay. But -- but in terms of the -- just the</p> <p>2 bare facts reported in these attachments we've</p> <p>3 just been talking about in the last few exhibits,</p> <p>4 the fact that a certain floor or bedding area was</p> <p>5 found to be dirty or that a certain vent was</p> <p>6 found to be dusty, you don't disagree with that</p> <p>7 bare fact, correct?</p> <p>8 A I don't disagree with what the individual</p> <p>9 statement is. I disagree with their overall</p> <p>10 evaluation of an area.</p> <p>11 Q Okay.</p> <p>12 A I don't believe that they look at an area as a</p> <p>13 whole and follow the sanitation protocol to</p> <p>14 evaluate the overall sanitation of an area.</p> <p>15 Just because a vent is dirty doesn't</p> <p>16 mean that an entire area is dirty. Just because</p> <p>17 you have a few missing tiles doesn't mean the</p> <p>18 area is dirty, and I think that this report</p> <p>19 packages things to make it look worse than it is.</p> <p>20 Q I want to ask you some questions about the</p> <p>21 triaging of risk among inmates. So just the</p> <p>22 general question first off, does DOC do anything</p> <p>23 to triage inmates or assess inmates according to</p> <p>24 the level of the risk level that they face from</p> <p>25 COVID-19?</p>	<p>Page 95</p> <p>1 into the community?</p> <p>2 A I don't know, you would have to ask CHS.</p> <p>3 Q Do you have any expectations that you place on</p> <p>4 Correctional Health Services as to whether they</p> <p>5 do that?</p> <p>6 A I don't understand the question.</p> <p>7 Q Well, I mean, it's -- I'm trying to understand</p> <p>8 how Correctional Health Services fits into the</p> <p>9 overall operations. DOC has overall charge of</p> <p>10 running the City of New York's correctional</p> <p>11 operations, correct?</p> <p>12 A Yeah, so we work hand-in-hand with CHS. So we</p> <p>13 did a lot of things for COVID that we had never</p> <p>14 done before.</p> <p>15 Our new admission inmates stay in new</p> <p>16 admission housing for at least 14 days and until</p> <p>17 medical clears them to be transferred to regular</p> <p>18 housing.</p> <p>19 We created what we call asymptomatic</p> <p>20 exposed housing area. So if an individual in a</p> <p>21 housing area was symptomatic or positive for</p> <p>22 COVID, the medical staff informed DOC and we</p> <p>23 quarantined the housing area, for lack of a</p> <p>24 better term, even though nobody else in the</p> <p>25 housing area was sick.</p>

<p>1 So we took the symptomatic person and 2 transferred them to either rest facilities or 3 EMTC for the men and the rest of the housing area 4 stayed where they were. No one else went in, no 5 one else came out until medical determined that 6 the people in the housing area were not sick so 7 we weren't taking somebody who may be in an 8 incubation period and transferred them throughout 9 the facility. So it's working hand-in-hand with 10 the medical staff.</p> <p>11 Q And I appreciate all that. My -- my question is 12 a little bit more conceptual in terms of in 13 dealing with COVID and things like testing, for 14 instance, is it a situation where DOC goes to 15 Correctional Health Services and says, Hey, we 16 need to make sure that we've got an adequate 17 testing protocol, you all at Correctional Health 18 Services develop a testing protocol for us and 19 implement it, or is it instead a situation that's 20 more like, DOC says, Well, we -- we just don't -- 21 that's not our thing, testing; Correctional 22 Health Services, if you -- if you want to test 23 people, do it, but we're not even going to have 24 anything to do with that conversation?</p> <p>25 I'm trying to understand does -- is DOC</p>	<p>Page 98</p> <p>1 Q (By Mr. Keenan) Who does CHS report to 2 ultimately?</p> <p>3 A They're a part of HAC (phonetic) and they report 4 to the mayor, I believe, like the rest of the 5 agency.</p> <p>6 Q Okay. But -- but say that DOC thinks that 7 Correctional Health Services is not doing its job 8 well or should do something differently, does DOC 9 have any authority over CHS to change or direct 10 change in the way CHS is doing things?</p> <p>11 A So I believe if we didn't agree with something 12 CHS was doing, it would be up to city hall to 13 determine which way it should go. They are -- 14 they are equal partners that work in this. We 15 are responsible for care, custody and control, 16 getting people ready to go back into the 17 community, and CHS is responsible for the medical 18 staff.</p> <p>19 But I can tell you throughout COVID, 20 our commissioner, Patsy Yang, those of us in the 21 executive team worked daily, hourly, nightly, 22 weekends with CHS to come up with the best 23 possible program and procedure that we could to 24 keep our incarcerated individuals safe, whether 25 it was recommending that they get released</p>
<p>1 exercising overall charge and responsibility for 2 Rikers and using Correctional Health Services to 3 fulfill that function of running a safe and 4 sanitary facility, or are these two separate 5 entities that really are equals to each other and 6 they're each kind of doing their own thing?</p> <p>7 A So they're not doing their --</p> <p>8 MR. THAYER: Ms. Feeney, I need to 9 object.</p> <p>10 A -- own thing at all.</p> <p>11 THE WITNESS: Huh?</p> <p>12 MR. THAYER: I just said objection, but 13 you can answer, Ms. Feeney.</p> <p>14 THE WITNESS: Oh, sorry.</p> <p>15 A They're not doing their own thing at all. We 16 work hand-in-hand very, very closely together 17 with CHS. They are the medical professionals.</p> <p>18 Together we work with the public health 19 professionals to come up with the best plan for 20 our agency, but CHS is responsible for the 21 medical care of the incarcerated individuals.</p> <p>22 And CHS and DOC together figure out what is the 23 best safest way to house people and have 24 everybody safe as can be all the time, and 25 especially during COVID.</p>	<p>Page 99</p> <p>1 because of their risk level, whether it was 2 creating this whole new housing system that we 3 never had before. So we work very well together.</p> <p>4 Q All right. So to go back to the issue -- you 5 said DOC's responsibilities, one of them is to 6 prepare inmates to go back in to the community, 7 if that's where they're headed, right?</p> <p>8 A Uh-huh.</p> <p>9 Q Is that a yes?</p> <p>10 A Yes.</p> <p>11 Q Okay. Is part of that to ensure that once they 12 get discharged, that they are not a threat to the 13 community?</p> <p>14 A Well, I don't know that we could ever say who is 15 discharged is not going to be a threat to the 16 community, but --</p> <p>17 Q To minimize that threat, to take reasonable 18 measures to minimize it, would you agree with 19 that?</p> <p>20 A I would say yes. But when it comes to doing 21 medical testing, that is CHS' bailiwick. It's 22 not DOC's bailiwick.</p> <p>23 Q Have you discussed with CHS whether to do testing 24 of inmates before they are discharged?</p> <p>25 A I have not, no.</p>

<p>1 MR. KEENAN: Let's go to another 2 exhibit and you tell us which number this will 3 be. It's the Legal Aid letter to of September 4, 4 2020. I'm not sure if that's been marked yet, 5 Julia, or not.</p> <p>6 MS. GOKHBERG: It is not. It will be 7 Exhibit 32.</p> <p>8 (Deposition Exhibit 32 marked.)</p> <p>9 MR. KEENAN: Okay. Let's bring that 10 up, please.</p> <p>11 Q (By Mr. Keenan) This is Exhibit 32, 12 Ms. Feeney. It's a six-page document, a letter 13 dated September 4, 2020 from the Legal Aid 14 Society, written to Commissioner Brann, as well 15 as Elizabeth Glazer in the Mayor's Office of 16 Criminal Justice. Do you recognize this 17 document?</p> <p>18 A Excuse me. Yes.</p> <p>19 Q Okay. You've seen it before and read it before?</p> <p>20 A Yes.</p> <p>21 Q Okay. All right. Let's go to the second and 22 third pages, you'll see some reports here. And 23 having read this letter, you would have read this 24 before, some reports of observations of officers, 25 including in August, of officers and staff not</p>	<p>1 me to tell me somebody refused to put their mask 2 on.</p> <p>3 So if Legal Aid had given us actual 4 dates and times, we could have gone back to video 5 and see if these were, you know, were truthful.</p> <p>6 Q Did you follow up and ask for specific dates and 7 times?</p> <p>8 A I did not speak to the Legal Aid Society, no.</p> <p>9 Q Do you know if anybody else did?</p> <p>10 A I do not.</p> <p>11 Q We talked earlier today about discipline. Where 12 will we find out whether anyone has been 13 disciplined, or where would documentation of 14 discipline, if there has been any, for not 15 wearing masks or gloves, where would that be 16 contained?</p> <p>17 A Okay, there's no mandate to wear gloves.</p> <p>18 Q Okay, so masks, let's deal with masks. Where -- 19 where -- if there has been any discipline for not 20 wearing a mask by a staff member, where would 21 that be documented, if anywhere?</p> <p>22 A If it is going through progressive discipline, 23 the first level would be in the facility because 24 that would have been a corrective interview.</p> <p>25 Then if a CD, a command discipline, was</p>
<p>1 wearing masks. And these are just anecdotal 2 observations. Do you have a position on whether 3 you think this is true or not true?</p> <p>4 A I do not. And because there were no particular 5 dates and times given, there was no way for us to 6 do a video review to see if it was true or not.</p> <p>7 Q Is there any process in place for reviewing video 8 at Rikers to determine whether officers and staff 9 are wearing masks or not?</p> <p>10 A Yes. I explained to you earlier that my 11 compliance and safety center has been doing that, 12 while they're doing their regular -- their 13 regular viewing.</p> <p>14 Q What's -- what's their process for that? How do 15 they select what video to review at what times 16 and what locations and for how long?</p> <p>17 A So they generally look at live feed because it's 18 a peer mentoring program, so we -- there's a 19 schedule of particular topics that they look at 20 at a particular time, a couple of hours for -- on 21 particular days. And while looking at those 22 things, if we see that staff are not wearing 23 their masks, then we'll call and ask them to do 24 so. And for the most part -- actually, I think 25 all the time, I don't think once they had to call</p>	<p>1 issued, that would be in the CD's computer 2 application. I don't know what you call it, 3 their computer application that all the command 4 disciplines are in.</p> <p>5 And for non-uniformed staff, again if 6 it went above a corrective interview, it would be 7 labor relation.</p> <p>8 Q Do you know why there was only a directive to use 9 infrared thermometers issued in September, why it 10 took that long to issue a directive on that?</p> <p>11 A Because we were using the handheld thermometers 12 prior to that. And the infrared cameras are -- 13 their camera that you -- when you walk in the 14 building, it kind of reads your heat signature. 15 Before that, we used handheld thermometers that 16 someone held and held up to your head.</p> <p>17 Q We talked today about audit reports, what -- can 18 you walk us through what the process is for 19 audits and how that process works?</p> <p>20 A Sure. Each captain is required to audit their 21 assigned areas three times during an eight-hour 22 period normal tour.</p> <p>23 There is an audit form that has them 24 check the things: Is there soap, are the 25 incarcerated individuals wearing masks, do they</p>

<p style="text-align: right;">Page 106</p> <p>1 have masks, are the staff wearing masks, are 2 there masks available in the housing unit areas, 3 are sanitation supplies available, and it lists 4 the different ones out, and did you receive any 5 complaints from the incarcerated individual. It 6 seems like there's one other thing that I'm 7 missing. Oh, and what time was the last 8 sanitation performed.</p> <p>9 If any of those things are found to not 10 be in compliance, the captain is required to 11 abate it immediately. That report gets submitted 12 at the end of the tour to the tour commander and 13 it then gets forwarded to the chief of facility 14 operations and AC Antoine (phonetic.)</p> <p>15 And then in addition to that, my staff 16 and the chief of facility operations staff go and 17 audit four or five housing areas in the intake 18 every day in different facilities, they rotate 19 the housing areas, so it's like an audit of an 20 audit.</p> <p>21 And then we have -- and they'll do the 22 same thing, and then we have the cast monitoring. 23 So there's a lot of people looking at this, not 24 to mention the managers and supervisors who are 25 touring on the facilities regularly.</p>	<p style="text-align: right;">Page 108</p> <p>1 what we do until maintenance repairs the 2 dispensers.</p> <p>3 MR. KEENAN: Looking over some notes 4 here.</p> <p>5 MR. THAYER: It's 3:03. I'm not sure 6 how much further you have to go, but --</p> <p>7 MR. KEENAN: No, I think I'm done. 8 Give me -- give me one minute just to check with 9 the other folks on my team. I mean, if we have 10 any more, it's like literally two minutes.</p> <p>11 THE WITNESS: No problem.</p> <p>12 MR. KEENAN: Just give me a second 13 here. I'm going to pause the recording.</p> <p>14 (Off the record.)</p> <p>15 MR. KEENAN: We're back on the record 16 after a short break. Very close to being done 17 here, Commissioner Feeney.</p> <p>18 Q (By Mr. Keenan) So what I'd loop back to 19 staff, would you agree with me that at this 20 present point in time, the biggest risk for an 21 inmate contracting COVID would come from 22 exposure to staff who might be bringing COVID 23 in from outside the facility?</p> <p>24 A Yes.</p> <p>25 Q Okay. So, and I know we've talked a lot about</p>
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1 you at this time. Page 110
2 THE WITNESS: Thank you so much. Have
3 a great day.
4 MR. KEENAN: You, too. No questions
5 from the City?
6 MR. THAYER: No.
7 MR. KEENAN: Okay. All right. Thank
8 you so much and I appreciate everybody's time.
9 Everybody have a really good rest of your day.
10 (Deposition concluded.)
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1 CERTIFICATE Page 112
2 STATE OF MISSOURI)
3 COUNTY OF JACKSON)
4
5 I, TRICIA D. TATE, a Certified Court
6 Reporter, do certify that pursuant to Notice to
7 Take Deposition, via videoconference,
8
9 PATRICIA FEENNEY
10 came before me, was by me duly sworn to testify
11 the whole truth of her knowledge of the matters
12 in controversy aforesaid, was examined and her
13 examination then written in shorthand by me and
14 afterwards typed, the reading and the signing
15 of the deposition being expressly requested by
16 witness, and said deposition is herewith
17 returned.
18 I further certify that I am not
19 counsel, attorney, or relative of either party,
20 or clerk or stenographer of either party, or
21 otherwise interested in the event of this suit.
22
23 IN TESTIMONY WHEREOF, I have hereunto set my
24 hand and seal this 23rd day of November, 2020.
25
/s/Tricia D. Tate
Missouri C.S.R. 1240
Kansas C.C.R. 1609

1 I, PATRICIA FEENNEY, have read the foregoing Page 111
2 deposition, and hereby affix my signature that same
3 is true and correct except as noted above.
4
5 PATRICIA FEENNEY
6
7 STATE OF _____:
8 COUNTY OF _____:
9
10 Before me,
11 on this day personally PATRICIA FEENNEY, known to
12 me (or proved to me on the oath of _____ or through (description of
13 identity card or other document) to be the person
14 whose name is subscribed to the foregoing
instrument and acknowledged to me that they
executed the same for the purposes and
consideration therein expressed.
15
16 Given under my hand and seal of office
17 this _____ day of _____, 2020.
18 Notary Public in and for
19 the State of _____:
20 My Commission expires:
21
22
23 JEAN AZOR-EL, et al.
24 VS.
25 CITY OF NEW YORK, et al.